

ILS LAW COLLEGE, PUNE

A DISSERTATION

ON

**DYNAMIC ROLE OF THE UNITED NATIONS SECURITY COUNCIL
TO MAINTAIN PEACE AND SECURITY IN ASIA ESPECIALLY IN
AFGHANISTAN**

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DECLARATION BY THE CANDIDATE

I, **MOHAMMAD RASIKH WASIQ** do hereby declare that this Research paper titled **“Dynamic Role of the United Nations Security Council to Maintain Peace and Security in Asia, especially in Afghanistan”** has been prepared by me during the year 2020-22 under the supervision and guidance of **Sri. Rohit Bokil**, Assistant Professor ILS Law College, Pune-411004. I further declare that; this work is of my own effort and has not been submitted to any college or for any other publication by me or by any other person either fully or partially.

Date: May, 2022

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Place: Kabul, Afghanistan

CERTIFICATE

This is to certify that the Research Paper titled “**Dynamic Role of the United Nations Security Council to Maintain Peace and Security in Asia, especially in Afghanistan**” has been prepared by **Mr. MOHAMMAD RASIKH WASIQ** of IV Semester LLM as a part of partial fulfillment of IV Semester LLM examination for the academic year 2020-22, was carried under my guidance and supervision. I certify that this is a bonafide work.

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ABBREVIATIONS

DPKO	UN Department of Peace Keeping Operations
GA	General Assembly
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Tribunal of Former Yugoslavia
NATO	North Atlantic Treaty Organization
NGO	Non Governmental Organizations
OCHA	UN Office for the Coordination of Humanitarian Affairs
R2P	Responsibility to Protect
ROA	Responsibility of All
RWP	Responsibility While Protecting
SG	UN Secretary General
UN	United Nations
UNSC	UN Security Council
UNEF	United Nations Emergency Force
WEU	Western European Union

UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
H.E.	His Excellency
OAU	Organisation For African Union
PCA	Permanent court of Arbitration
PCIJ	Permanent Court of International Justice
SEATO	South East Asia Treaty Organisation
Sec. Gen.	Secretary General on United Nations
ISI	Inter-Services Intelligence
IRO	International Refugee Organisation
CEANTO	Central Treaty Organisation
CIA	Central Intelligence Agency
ISISI	Islamic State of Iraq and Syria
CNN	Cable News Network
BBC	British Broadcasting Corporation
UNGOMAP	United Nations Good Offices Mission in Afghanistan and Pakistan
UNIIMOG	United Nations Iran-Iraq Military Observer Group
BSA	Bilateral Security Agreement
QCG	QUADRILATERAL COORDINATION GROUP

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND OF STUDY

“Each one has to find his, peace to be real must be unaffected by outside circumstance”

Mahatma Gandhi.

Peace in common parlance means absence of hostility, reconciliation or state of tranquility and stillness, absence of war or violence. Peace occurs between heterogeneous social group and is characterized by a lack of conflict and freedom from fear of violence. International terrorism has become a dangerous phenomenon threatening the peace and security of all Nations although terrorism has long been the part of human history, the last four decades have seen dramatic increase in the use and scope of terrorist acts. During this time the phenomenon has not only crossed regional boundaries but has acquired an international character, and is spreading thorough the world. Terrorism is a tool, not a political movement. Group from Ireland, the Philippines, the Korea, Peninsula, Japan, Africa, the Middle East, Russia, Pakistan and the United States have used to their political causes and goals precisely because it has proved to be such an effective tool when small, powerless group confronts a much larger, more powerful adversary.¹

Assassinations of Lord Mount Batten, Mrs. Indira Gandhi and Rajiv Gandhi in India, Sardar Mohammad Daud Khan Prime Minister of Afghanistan and Dr. Najbullah Ahmad zai

¹ Mc Cowans Ferry Road, Versaille, Kentucky 40383 USA the theory and practice of international law.

President of Afghanistan taking American embassy in Iran, series of attack to Indian embassy Kabul , in India attack to red fort against the symbols of democracy, parliament attack, series of routine bombing and proxy attack which take life thousands innocence people in Afghanistan Iraq, Syria, Palestine, Yemen ,Kenya ,Somalia and turkey etc.

The international conference peace conference held at Hague in 1899 and 1907 were notable as major diplomatic gatherings convoked in time of peace with involvement of variety of subjects like the business of international relations. After the break of world war I, an important international organization took birth known as league of nations, which prescribed notable great power also became member it had so many organs and assembly of league of nations was represented organ and the work of organ and conducted through six principal committee the council of the league of nations composed of nine states the secretariat was head by secretary general who was the chief administrative organ of the league. The greatest success of League of Nations was in the furtherance of co-operation in economic and social matters like health traffic ion opium communication and to transmit economic and financial problem protection of refugees. Trafficking of women and children etc. the league of nation failed down due to split between France and Great Britain, the failure of United states to ratify and there by become a member.

The main international conference a gathering of representatives from several states was simply large in diplomacy. The peace of Westphalia in 1648 emanated from such a conference as did the settlement after Napoleonic wars in 1815 through the conference of Vienna and even later the post 1918 and embodied in the treaty Versailles. The creation of league of state, dedicated to maintenance of peace, had been advocated in philosophical and juristic wiring and in the aims of private organization. The immediate source of the league

nations was, however a proposal introduced at the peace conference of Paris 1919. The league's objective was "to promote international cooperation and to achieve international peace and security". The system of collective security envisaged in the covenant rested essentially, on the notion of disarmament (Art.8) pacific settlement of dispute and outlaw of war (Arts.11-15). The league's disarmament failed dismally. The failure of the League of Nations to avert a second world war did not destroy the conviction, shared by many that only by some form of general organization of state could a system of collective security be achieved which would protect the international community from the scourge of war. The United Nations and by 1943 the Moscow declaration had recognized "the necessity of establishing at the earliest practicable date a general international organization based upon the principle of sovereign equality of all peace -loving states large and small for the maintenance of international peace and security".²

The League of Nations did not prevent the outbreak of wars or the invasion of one country over another. While the Second World War was full swing, the allied power for political and psychological reasons felt the necessity for creating a new international organization better than the League of Nations for establishing peace.³ The UNO arose on the ashes of League of the Nations. It is neither a super state nor a world government. The UN charter contains 111 articles in its constitution and it is divided into 26 chapters. It has flag of its own on which the globe is imprinted. The UN consist of 6 principal organs and specialized agencies and other subsidiaries organs which may be created from the principal organs of for the realization of their different task.

² D.W. Bowett, , 4th edition ,The law of International institutions published by universal publication 2013

³ Leonard Short History of International organization (1951) Chapter 2

It is an international cooperation between sovereign states for promoting international peace and solidarity.

Art. 1 of UN talks about (i) maintenance of international peace and security (ii) development of friendly relations among the nations (iii) international cooperation in solving problem of social, cultural and humanitarian nature: promotion of and encouragement of respect of human right and fundamental freedom and (iv) to be centre for harmonizing the actions of nations to achieve the end.⁴

In order to ensure prompt and effective action by the UN its members confer on the Security council primary responsibility of the maintenance of international peace and security and agree that in carrying out its duties and in discharging these duties security council shall act in accordance with the purpose and principal of UN (Art.24)

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resource, the security council shall be responsible for the formulation with assistance of the military staff committees, plans to be submitted to the members of the UN for the establishment of the system for the resolution of armament (Art. 26).

“Peace is not merely a distant goal that we seek, but a means by which we arrive that goal”

Martin Luther king Jr.

1.2 OBJECTIVES OF THE RESEARCH

For this piece of research paper, I have endeavored to expand the reach of UN Security Council, both in size and in content. The UN, though often criticized, is an important and

⁴ Dr. S.R. Myneni , 3rd edition 2008, International Relations p 262

unique international body as a platform for diplomacy and debate. By undertaking research in the said topic, my objectives are to:

- To search and find out the truth with evidence in UN Security Council Frame work.
- To predict future occurrence and consequences.
- To study the factor behind failure and success of UN Security Council.
- For better understanding of Responsibility to Protect Principle and its implementation.
- To pave way for broad based suggestions for international peace.
- Analysis of present challenges and war violence phenomenon.

1.3 NEED FOR RESEARCH

This research work gives brief description of the UN Security Council to understand the following

- Specific country with veto power
- Monopoly proxy war
- Peace and war in the hand of a few supreme power country and their game with other countries.
- Cooperation in elimination of terrorism
- Failure of UN Security Council at present scenario
- UN Economic sanction only on the basis of political interest
- UN action is based on the biased decision of super power country
- UN Security council is silent in certain issues
- An Analysis of United Nations Security Council Resolutions: Are All Countries Treated Equally

- The United Nations and Changing World Politics

1.4 RESEARCH QUESTIONS

- Whether UN Security Council can be improved through effective control by gigantic organization?
- Whether UN Security Council has to work for its reinstatement of protection of world peace?
- Whether UN has been successful in maintaining peace in Afghanistan?
- The failure of UN Security Council is maintainable in its peripheral outlook? If so How.
- How can the UN Security Council face the present challenges?
- Who is responsible for restoring international peace and security?

1.5 HYPOTHESIS

- The UN Security Council has been successful in maintenance of peace.
- The UN Security Council has been successful this endeavor through implementing agencies
- The Action of UN Security Council towards maintenance of peace largely depends on the International relations of the permanent members.

1.6 RESEARCH METHODOLOGY

The topic chosen for research is of great theoretical importance and as well has impact on understanding the international world politics. Hence the method adopted for research shall

be doctrinal research. Under doctrinal research, blend of the following techniques has been used towards achieving the research objectives.

➤ **Historical Research**

In this method of researcher contented to see establishment of League of Nations and United Nations conferences and measures for the maintenance of peace and security.

➤ **Comparative Research**

With this method researcher has highlighted the difference between peace and war. Veto power Nations and non-veto power.

➤ **Analytical Research**

Through this method, a critical analysis of the consecutive war and terror in Asia such as Afghanistan, Kenya Somalia, Iraq, Syria etc. Further to discuss the reservation of veto power to developed Nations.

1.7 COLLECTION OF DATA

➤ **PRIMARY SOURCES**

The primary sources of my research will be the documents of resolutions passed under United Nations General Assembly and Security Council, the report of international commissions, authoritative books and case reports of International Court of Justice.

Along with this I have visited His Excellency Dr Shaida Mohammad Abdali, Ambassador of the Islamic Republic of Afghanistan to India and Non Resident Ambassador of Afghanistan to Nepal, Bhutan and the Maldives, Embassy of Afghanistan, New Delhi, India. The opinion expressed during the personal interview shall be used in this research as primary source.

Security Council Resolutions

- ➔ UN Security Council Resolution 731 (1992)
- ➔ UN Security Council Resolution 1267 (1999)
- ➔ UN Security Council Resolution 1904 (2009)
- ➔ UN Security Council Resolution 1989 (2011)

SECONDARY SOURCES

- The secondary sources upon which i will be relying in my research work shall include various articles published in international journals, magazines, scholarly works and such other Internet sources.

1.8 SIGNIFICANCE OF THE STUDY

The objective of the research is to provide platform for strategies for the maintenance of peace and security, to provide constructive suggestions to National organization and international organization for the restoration of peace and stability to explore innovations in the area and the way forward. The purpose is to understand the situations of regional security and veto Power Nations in the Asia at present unearth challenges and highlights some the success stories. The significance may be as follow:

- To review the existing international security and peace measures for eradicating terrorists and identifying supporters of the such unlawful organizations which is dangerous to life of every human being.

- Suggest strategies for providing suitable resolutions to eradicate violation of peace and stability.
- To suggest the state inclusive policy for the maintenance of peace.
- Suggestion for the improvement and effective implementation Security Law against those who are engaged in inhumane activities.
- To study and understand the Efforts to Revive the UN's Role in Peacemaking
- To highlight Power Politics and the Challenge of International security and peace.

1.9 SCOPE OF RESEARCH

The researcher has difficulties with non-doctrinal method of research as listed below:

- There is no proper and exact statistical data for research.
- There is no primary data such as survey due to time constraints.
- Due to lack of availability of authoritative books in the nearest library, much research has been conducted by relying on internet materials and authenticated Un website.

1.10 CHAPTERIZATION

CHAPTER -I

Introduction

In this chapter a formal introduction to the research topic with brief explanation on the concept of peace and security has been discussed. The main focus of this chapter will be on the research design which includes, methodology of research, hypothesis, Scope and significance of research and mode of citation adopted.

CHAPTER -II

Historical Background

This chapter deals with historical background of the establishment of the United Nations and its role in maintaining world peace. Understanding the way which led towards the establishment of UN paves way for better understanding of its powers and limitations under the present charter.

CHAPTER- III

Powers, practice and effectiveness of Security Council

UN Security Council is the main focus of this research and hence in this chapter a detailed analysis of the powers bestowed upon Security Council towards its effective functioning of maintaining international peace and security shall be made. Under this chapter a special attention has been given to veto power and its pattern of usage by permanent five.

CHAPTER- IV

Peacekeeping mechanisms of Security Council – An analysis

This chapter focuses on the peaceful functions, forceful functions and humanitarian functions of UN Security council in developed and developing states. A comparative study of various mechanisms adopted by the council under different circumstances has been undertaken for the purpose of better understanding and analysis.

CHAPTER- V

Role of UN in pursuit of peace in Afghanistan

Role of UN in building peace in Afghanistan can be traced back to 1980s when an emergency session of UN Security Council, held between 10 and 14 January 1980 as an aftermath of USSR's Afghanistan invasion, passed the resolution ES-6/1. There are currently 16 UN peacekeeping operations and one special political mission – the United Nations Assistance Mission in Afghanistan (UNAMA) – led by the Department of Peacekeeping Operations. This chapter focuses on various strategies adopted by UN in its efforts towards achieving peace in Afghanistan and its effectiveness so far.

CHAPTER- VI

Responsibility to Protect and its implementation – Case Studies

Responsibility to Protect or R2P is an evolving international principle finding its root from humanitarian intervention and collective security. This principle calls for unanimity and consensus among all the states for actions against humanity. Under this chapter focus has been given towards understanding the implementation of this norm by way of selected case studies.

CHAPTER -VII

Findings, Conclusion and Suggestions

This chapter briefly analysis what has been discussed in the earlier chapters based upon the discussions, the conclusion and suggestions will be made for better maintenance of peace and security.

1.11 MODE OF CITATION

A uniform method of Bluebook method of citation shall be used for footnoting and referencing throughout the research report.

1.12 Conclusion

This paper advanced the argument is that the UNSC has an institutional responsibility to promote the framework conditions that will enhance mediation interventions. The UN Security Council is endowed by the founding Charter, as the institution responsible for establishing the framework conditions for international peace and security. As such the UNSC is humanity best expression of our aspiration and desire for a framework for promoting our collective security. A historical retrospective reveal that the UNSC prevaricated during the genocide in Rwanda. The UNSC created the not-so-safe havens in Srebrenica that enabled pogroms against Bosnian Muslims. Today, juvenile brinksmanship within the UNSC has allowed the Syrian crisis to deprive innocent children, women and men of their human dignity due to the war crimes that they have had to endure.⁵

The member states conferred on the Security Council the primary responsibility of maintaining international peace and security and sub limiting their sovereign prerogative of using force. The member states might have not surrendered their national interest to an over-arching Internationalism but there was an attempt to redefine national interest in view of increasing interdependence within the framework of an international organization. The founding members of the United Nations who assembled at San Francisco in 1945 were

⁵ African Union 2005. The Common African Position on the Proposed Reform of the United Nations: The Ezulwini Consensus, EXT/EX.CL/2 (VII), African Union, Addis Ababa. 7–8.

determined to create an institution that would be more effective than its predecessor (the League of Nations) in maintaining world peace and security.⁶ The Security Council was armed with greater powers than the League Council and members were obliged to carry out its decisions regarding use of armed forces against aggressors. However, with the disintegration of the Soviet Union and the emergence of US-led unipolar world the working of this body has undergone a tremendous change.⁷ In the period following World War II, the checks-and-balance mechanism existed as the cold war between the power blocs (United States-led NATO and the Soviet Union-led Warsaw Pact), neutralized each other's' hostile postures despite their arms race. Although there was mistrust between the two power blocs, due to their aggressive stance, they could ensure that World War did not break. But with the disintegration of the Soviet Union at the end of the cold war, the United States hijacked the global collective security mechanism through its economic influence and military prowess; emerging world's watchdog. Apart from face-off with the key players in the United Nations on security matters that affect its interest, the United States faces one major challenge.

After the Soviet forces entered Afghanistan in December 1979, the US became committed to force the Soviet Union to end its occupation and withdraw. It wanted to score a point against the Soviet Union in the cold war by inflicting a crushing and humiliating defeat on it. The US supported the Mujahedeen, without ever looking into their credentials or ideology. When the Taliban arose from the madrasas in Pakistan in 1994 with the avowed objective of getting rid of the feuding and corrupt Mujahedeen rulers, the US only looked

⁶ Consensus, EXT/EX.CL/2 (VII), African Union, Addis Ababa. 7–8 March. Rumki Basu, The United Nations-Structure and Functions of an International Organisation,

⁷ Rumki Basu, The United Nations-Structure and Functions of an International Organisation, New Delhi, Sterling Publishers, 1996, p. 336

on. Some analysts even suggested that the Taliban served American interests. The US hoped that after long years of turmoil, the Taliban would unite the country. Since the bombing of the American embassies in Dar-e-Salaam in Tanzania and Nairobi in Kenya in 1998 had given a jolt to the US, its perception of terrorism underwent a radical change. Al Qaeda's attack on the US on 11 September 2001 could only be compared in its magnitude and impact with the Japanese attack on Pearl Harbour. These attacks on the economic and political symbols of Western power constituted the closure of an era of US invulnerability.

CHAPTER -II

HISTORICAL BACKGROUND

2.1 INTRODUCTION:

The process of international common spirit and unity remained in growth though the times have seen lawlessness and discord. In 1305 A.C a plan was proposed for an alliance of the Christian Powers by Pierre Qubies, A French Lawyer. He pleaded for the establishment of a permanent court of arbitration for the settlement of disputes among the members of alliance, though the same failed being defective for want of adequate machinery for interstate co-operation. Another league known as the Hanseatic league was formed in 1315 which was a kind of political organization though formed for the promotion of trade. In the process many important steps in development and establishment of international organizations have taken place in the past such as the Grand Design 1603 a scheme of Duke of Sully. The Peace Treaty of Westphalia in the year 1648 which legalized. The new order of European International relations, another treaty known as the peace of Utrecht, 1713 which furthered creation of several sovereignties, the congress of Vienna held in Sept, 1814 and June, 1815 to answer the claim of nearly every state of Europe and efforts were made to abolish slavery, opening of international boundaries to commerce for signatory states who pledged to regulate by common consent regarding navigation. Considerable development of international organization achieved through this congress as the allies consented to enforce

the peace despite hostilities for periodic conferences and maintenance of peace on big powers collaborations. Resultantly, it contributed a major organ of modern international organization i.e. executive council of the great powers. The international peace conferences held at Hague in 1899 and 1907 were notable as major diplomatic gatherings convoked in time of peace with involvement of variety of subjects like the business of international relations. The leading feature of Hague system its approach towards the universality. The Hague approach was a call of intention to the reality of global and to the problem of peace and thus rendered valuable service in calling attentions to the fact there are difficult problem of international organization itself. Thereafter public International Unions served a lot for the global unity and co-operation. Once world is in some respects on ideal and an aspiration boom of modern, interpretations of ancient moral insights and of rational estimates of the requirements of human survival, it is in other respect a pressing reality, an actual condition of mankind produced by a century of change that has tied all the peoples of the earth together in an unprecedented intimacy of contact, Interdependence of welfare and mutability of Vulnerability. Whether or not we obey the regions injunction to behave like brothers or attain the ethical objective of a peaceful world community, we human beings cannot escape the hard fact that all of us are, as John Donne Put it "involved in Mankind." Given the existence of one world defined as set of objective conditions, disaster may be the price of failure to achieve one world defined in terms of a moral and political ideal.⁸

2.2 INITIAL EFFORTS

The development of the idea of international organization can be traced back to the earliest of the recorded history. In countries like china, India, Mesopotamia and Egypt contracts

⁸ Claude - "Swords into Plowshares" Published by Anupama Publications, (1987), p. 3.

between rulers, and Kingdoms were not uncommon. There was a fair agreement on diplomatic practices commercial relations treaties of alliances codes of warfare and terms of peace. Man gone has observed that "the treaties of the past are the first steps towards: international organization". Even amongst the Greeks treaties, alliances diplomatic practices and services arbitration and other methods of peaceful settlement of disputes, rules of war and peace leagues and confederations and other means for regulating interstate relations were well known and widely used⁹

The development of the idea of international organization as follows -

2.2.1 The Amphictyonic League of the Greeks 6th B.C.

This league was formed with the objective of creating international unity and avoiding war. This league, though could not out war laid down the rule that the frightfulness in war was to be avoided.

2.2.2 Delos: 477 B.C.

In 477 B.C. confederation Delos composed the maritime state of Asia Minor Aegean Island. The Cyclades, Euboea and many other city states on the shores of Thrace and propoines was formed. The member state provided for a common navy by making contributions of ships and men.

2.2.3 The Achaean League of the Hellenes

⁹⁹ L.N. Srivastava - "A Simple Book of International Organization", published by Surjeet Book Depot., (1973), pp.5-9.

This league was formed by the Greek. In this league they had about 70 member states which enjoyed full autonomy. It must be observed that these confederations of the ancient Greece were confined to the race the Greeks and the outside nations were not admitted as members.

2.2.4 Roman Contribution

The Romans made a different contribution to the growth of international organization. Though the idea of international organization was foreign to the Romans they nonetheless contributed legal military and administrative techniques and provided to basis of the "Jus Gentium" which in later centuries became as important source of international law. However, in one respect of the Roman experience marked an advance over the Greek experience is as much "as it consisted of many races and nationalities.

2.2.5 The Alliance of the Christian Powers: 1305

After the decline of the Roman Empire, the continent of Europe once again relapsed into lawlessness and discord. Efforts were made by Charle Magire to bring some order in an otherwise mad world, but these were short-lived. In 1305 Pierre Qubies a French Lawyer proposed a plan for an alliance of the Christian powers. He pleaded for the establishment of a permanent court of arbitration for settlement of differences between the members of the alliance. The plan was defective in so far as it failed to provide an adequate machinery for inter-state cooperation. In short throughout the middle age alliances and associations of political commercial and religious areas and groups were often formed.

2.2.6 The Hanseatic League; 1315

The association formed for the promotion of trade, which was also a kind of political organization was the Hanseatic League. Other example of the famous confederation which

became the nucleus of the modern state of Switzerland was a treaty among the Swiss cantons of Uri, Schwyz and Unterwalden.

2.2.7 The Grand Design: 1603

The next multi-stone on the road of the development of international organization were the scheme of Duke of Sully proposed in the 1603. This is also known as "The Grand Design" of Henry IV it envisaged Christian Republic of 15 states to eliminate war and effect settlement of dispute by peaceful means. The Scheme failed because it was little too radical. It was also very narrow because it concentrated on the European states and their affairs and could not be by any means a plan for universal peace.

2.2.8 The Peace Treaty of Westphalia -1648

This treaty was the next important step in the establishment of international organization. Although no international organization was established by the peace of Westphalia and no consideration was given to the economic and social distress left in the territories wasted by the havoc of warfare. Many feel that the joining of practically every European state in a diplomatic conference signaled the opening of a new era in international assembly. "The Congress of Westphalia little resemblance to the intricate organization of twentieth century" peace conferences. No officer presided, no committees were formed no votes were taken. But the cities of negotiation the route between Munster and Osnabruck were neutralized from the war while both Papal Nuncio Chigi and Ambassador Contarini of Venice acted as mediators for the plenipotentiaries in Munster of the greatest importance to international organization, however/in a diplomatic conference which represented practically every political interest in Europe and the achievement by negotiation rather than by the dictation

of two great multilateral treaties which legalized the new order of European international relations.¹⁰

2.2.9 The Peace of Utrecht: 1713

This treaty was another important step in the direction of establishing international organization. The treaty shattered imperial aspirations and furthered the creation of several independent sovereignties. Three new dynasties received international sanction viz protestant succession to the British throne was recognized by France, the Elector of Brandenburg took the title of Prussia. Nice was also proclaimed as the king of Sicily.

2.2.10 The Congress of Vienna: Sep. 1814 and June 1815

The Congress of Vienna marks the next important step in the direction of the development of international organization. This congress significant because unlike Westphalia and Utrecht. The deputies at Vienna met in time of peace to answer the claims of nearly every state of Europe. Prof. Mangone have observed that by comparison with the pre Napoleonic International gatherings the Congress of Vienna made some remarkable advances towards international organization in the extent of (a) its political settlement (b) the diversity of economic-social problems treated, (c) the procedure of the congress itself. Apart from conforming France to its original boundaries, the settlement restored territories to different countries which had been over-run by Napoleon. Neutrality of Switzerland was affirmed.

¹⁰ Mangone Gerard J, "A short history of International organization", Published by New York McGraw Hill, (1954), p. 22

2.3. DEVELOPMENT IN 19TH CENTURY

The first of the three major streams of development whose rise may be traced to the nineteenth century is the system of multilateral, high-level, political conferences. Diplomacy: The traditional technique for conduct of international affairs was essentially a bilateral phenomenon, involving occasional consultation and negotiation between two sovereigns or their representatives larger-scale gatherings managers of foreign relating were not unknown before the nineteenth century and the idea of such conferences had a respectable age. Thus, Hugo Grotius, the so-called father of international law, opined in 1625 that: "It would be advantageous, indeed in a degree necessary, to hold certain conference of Christian powers, where those who have no interest at state may settle the disputes of others and where, in fact, steps may be taken to compel parties to accept peace on fair terms"¹¹

Post The congress of Vienna in 1815 initiated a series of development which made it visible to speak of a nineteenth - century conference system without precedent in the modern world. This development, involved a great deal more than the mere multiplication of multilateral convocations. A major feature of the unsystematic system was the frank assumption by the most powerful states, the term -"great power" took on definite meaning and became something like a formally established category after 1815. The concert of Europe was an exclusive club for great powers, whose members were self-appointed guardians of the European Community and executive directors of its affairs. They sometimes admitted European small fry to their splendid presence and occasionally failed to

¹¹ H. Lauterpacht, "The Function of Law in the International Community", Published by Oxford: Calrendon Press, (1933) p. 7.

dominate the scene as completely as they wished, but they left no room for doubt that the concert of the great powers.

Before the nineteenth century of Europe were no preoccupied with them sovereign dignity that they were virtually unable to do anything more at international conferences than argil about questions for precedence and prestige.

In planning for a peaceful European order William Pen felt compelled to stipulate that sovereigns should meet in a round room with many doors so that substantive discussions should not be delayed by long arguments about who should have the privilege of entering first into the room Rousseau described international conference as places "where we deliberate in common council whether the table will be round or square, whether the hall will have more doors or less, whether such and such a plenipotentiary will have his fact or back turned toward the window."

2.3.1 The Hague System

A new sort of international conclave was instituted at The Hague in 1899, and 1907. The conscious construction of a distinctive "Hague System" of international relations were interrupted all too soon by the outbreak of world war but the beginning that had been made was significant enough to figure as one of the major contributions of the nineteenth century to present day world organization. The-two "International Peace Conferences" held at the Hague, under initial impetus provided by Czar Nicholas II of Russia, were notable as major diplomatic, gatherings convoked in time of peace to deal with a variety of subjects involved in the business of international relations. Although the original motivations behind the Hague conferences were questionable. (It has been alleged that the Czar was actuated less

by sincere desire to promote peace than by worry about Russia's financial disadvantage in the armaments competition) and their immediate results were not universally regarded as promising (the London times held that the conference of 1907 "was a sham and has brought forth a progeny of shams, because it was founded on a sham,⁹ it is clear that The Hague meetings were envisaged as steps toward a more adequate organization of the state system and it is. From that point of view that they will, be discussed other. This aspect of The Hague conferences was emphasized by the attention which was given to the task of institution building for our purposes the primary historical importance of the meeting of 1899 and 1907 lies in the fact that a major concern of the participant was to "create" devices and agencies which would be permanently at the disposal of states.

2.4 WORLD WAR I - BIRTH OF THE LEAGUE OF NATIONS

The immediate origins of the League of Nations are to be found in the development of both private and public schemes during the world war 1st of 1914-1918, particularly in the United States which took place at parts as a part of the diplomatic enterprise of bringing the war to a formal conclusion. Unofficial consideration of the possibility of making a great new experiment in international organization flourished during the years of hostilities, under the leadership of such groups of prominent and influential citizens as those who united in the league to Enforce Peace in the United in the League of Nations Society in Britain. tes and Great Britain and in the negotiations.

In the American Senate covenant and the treaties of which it was a part ran into irreconcilable opposition. Several groups of amendments "were offered but to no avail and in the 'end the senate rejected both the league and the proposed peace settlement. Despite

this rejection the covenant was adopted by enough nations so that on January 10, 1920, it went into force.

The membership of League of Nations was shifting matter, as new members were admitted from the time to time and old ones withdraw. During most of the league's history the total membership was somewhere in the middle fifties, as 'of December 31, 1938, there were fifty-eight states in the organization. Among the great powers, Germany was admitted in 1926 and in 1933 she gave notice other intention to withdraw. Russia was admitted in 1934 and .in 1940 the council vote to expel her. A large number of withdrawals in 1938 and 1939 and the extinction of other members by conquest (Australia and Ethiopia) reduced the membership to forty-nine by the time world war and broke out.

The organization of the league included an Assembly, a council, a secretariat and a number of auxiliary organizations of a technical nature (such as the Health Organization, the permanent Mandates commission and 'the Intellectual Go-operation Organization); The International labor organization and the Permanent" Court of International Justice were not parts of the league of-nations, but there were several points of contact; between three organizations, as for instance in financial matters where all were taken care of by -the same budget¹²

2.4.1 The Assembly

The Assembly of the league was the representative organ to which all members sent delegations with each entitled to one vote. It met for its regular session at Geneva in September of evils year, and it met occasionally in extraordinary sessions. The president of

¹² Norman Hill "International Organization" Published by Harper and Brothers, New York,(1952), pp. 37-45

the Assembly was elected by that body at the beginning of each regular session. There were six principal committees through which much of the work of the organ was done -

(a) Legal and Constitutional Questions

(b) Technical Organizations

(c) Reduction of armaments

(d) Budgetary Questions

(e) Social and General Questions G. Political Questions

The Assembly was authorized "To deal at its meeting with any matters within the sphere of action of the league or affecting the peace of world. It exercised electoral function in several instances, approving the appointment of secretary General, electing judges to the Permanent Court of International Justice (with the council's) and electing non-permanent members of 'the' council, one 'of the most for reaching duties of the Assembly was' that formulating and- approving the budget, an activity which provided an opportunity to give some direction to the work of the league 'and its affiliated bodies. Still another function of the Assembly was that to admitting new members. One of the most useful contributing of the Assembly to the day and age which it dimply its provision: of-a forum for the discussion of international problems on the basis of free speech, many indeed were the international problems debated from its rostrum.

2.4.2 The Council

The council was to be composed of nine states, of which five. The United States, The United Kingdom, France, Italy and Japan-were to: be permanent members with the

other four nonpermanent members selected by the Assembly. The rejection of the covenant by the United States left the organ) with only four permanent seats. Under the authority of Article-4 of the covenant, this provided that, "with the approval of the majority of the Assembly, the council may appoint additional members of the league whose representatives shall always be members of the council", Germany and Russia were given permanent seats during the periods when; they were? in the-league. Using a similar procedure, as authorized by the covenant the number of non permanent members; of the council was increased to six in 1922, to nine in 1926, to ten in 1933, and eleven in; 1936¹ By 1939 there were a total of fifteen states in the council. At times there was a lively competition for nonpermanent seats in the council and during the league's history several states; Brazil, Spain 'and' Poland were miffed that they were not given permanent seats.

2.4.3 The Secretariat

The secretariat headed by Secretary General was the chief administrative organ of the league. The international civil service which its staff constituted was made up some 650 staff members. The complaint was common for a long time tilt there were too many British, French 'and Italian nationals within the secretariat and consequently in 1932 the Assembly inaugurated reform measures which prevented too many nationals of any one state from holding posts at the same time. There were in the secretariat fifteen sections (Political legal, information, minorities, mandates, economic relations etc.) eight administrative services (personnel office, publications service, internal services, registry, direction of personnel and internal administration, documents service, stenographic service and secretariat" of the staff pension fund) and a library all located at Geneva several auxiliary offices were maintained in other cities. The duties of the secretariat were many and varied. Among them were the

following, registering and publishing treaties, assisting in the drafting of the agenda of the council. Assembly and other organs, providing secretarial services in those bodies; exercising custody over the records of the various meeting within the league and publishing documents and other materials. There were not spectacular activities but they were most vital to a proper functioning of the organization.

2.5 THE FAILURE OF THE LEAGUE OF NATIONS

The International Consultative Group of Geneva published a careful analysis of "the conditions that had led to the league's downfall. The group expressed the opinion that "The failure of the United States to ratify and thereby become a member) was certainly that hardest blow to the new institution. It mentioned also the split which developed between. France and Great Britain, the tendency of "the latter "to pull away from Europe", the lack of Farsighted leadership in the nations, the problem of Germany, social discontent and "spiritual anarchy". TNs stress by the group upon adverse attitudes and conditions within the states rather "than upon organizational inadequacies appeared quite convincing in view of the fact that the league had, and could have, little life other than imparted to it by the nations which were its members.

The Machinery of the league of Nations could be criticized at many points its voting methods, its lack of effective sanctions, the right of members withdraw, and so on whether these weaknesses could have been eliminated by members devoted to power politics and often seething with economic and political unrest in doubtful, and even; had. the defects been eliminated on paper, it is not certain that the nations could have fitted themselves into the more powerful'-world organization that-would- have resulted. In his last days President Wilson expressed the view that the league had failed in the senate because "The American

people were not ready for it". As the United States contributed to the downfall of the league from the outside, so did many of its members from the inside. The world as a whole did not appear ready for it¹³

2.6 WORLD WAR II

The United Nations arose on the ashes of the League of Nations. The failure of the "League" to prevent War and to promote peace strengthened the conviction of the people all over the world that an effective system of collective security was absolutely essential by this time even the 'United States of America was willing to enter a system of collective security. However, no effort was made to revive the league of Nations' and it was decided to start all over again. Some of the important meetings and conferences, which ultimately led to the establishment of the United Nations.

2.6.1 St. James Palace Declaration (June 12,1941)

The first step towards this world most prestigious democratic organization was taken by the time Exiled government in London (Greece, Belgium, Czechoslovakia, Luxembourg, Netherlands, Norway, Poland and Yugoslavia). 'Gen'. De. Gaulle of France was also there and U.K., Australia, New Zealand, South Africa also expressed their desire to establish peace in the world and signed a declaration on 1 June, 1941 at St. James Palace expressed in writing.

2.6.2 The Atlantic charter-(August 14,1941)

The Machinery of the league of Nations could be criticized at many points its voting methods, its lack of effective sanctions, the right of members withdraw, and so on whether

¹³ International Consultative group of Geneva. 'Causes of the Peace Failure, 1919-1939 International conciliation, No. 363 Oct-1940.

these weaknesses could have been eliminated by members devoted to power politics and often seething with economic and political unrest in doubtful, and even; had. the defects been eliminated on paper, it is not certain that the nations could have fitted themselves into the more powerful'-world organization that-would- have resulted. In his last days, President Wilson expressed the view that the league had failed in the senate because "The American people were not ready for it". As the United States contributed to the downfall of the league from the outside, so did many of its members from the inside. The world as a whole did not appear ready for it.

2.6.3 The Declaration of the United Nations- (January 1, 1942)

This declaration was issued after a few weeks of pearl Harbor incident. In this declaration, which was signed 'on new year's' Day by Roosevelt, Churchill Litvinov and song for 'their respective governments and by the representatives of twenty-two Other states on the following day, the signatories pledged all their recourses in the common struggle against their enemies until complete victory was won. This declaration was later on signed by other states also who entered the side of the United Nations.

2.6.4 The Casablanca Conference (Jan. 1943)

In January 1943, Prime Minister Churchill and president Roosevelt met the French representative in the city of casa balance in North Africa to plan invasion of Italy and Sicily. They agreed on a formula of Unconditional surrender talked over terms of peace and discussed the role of theft" respective countries in the post-war period.

2.6.5 The Moscow Declaration (Oct 30-1943)

The Moscow declaration of October '30, 1943 Signed by Molot over for the Soviet Union, Eden for Great Britain Hull for the United states and Pooping sheung for china, was probably one of the most important step in the direction of forming the U.N. By this declaration the four -Great, powers declared that they recognize the 'necessity of establishing at the earliest practical date a general international Organization, based on the principle of sovereign equality of all peace loving states and open' to membership by all'- such states, large; and small, for the maintenance of international peace and security.

2.6.6 The Tehran Conferences (Nov. 1943)

President Roosevelt, Prime Minister Churchill and Premier Stalin met at Tehran and issued a joint statement on Dec. 1, 1943. by which they accepted the supreme responsibility to make* a peace which will command the good will of the overwhelming mass of the people of the world and banish' the scourge and terror of war for many generations. They further sought the cooperation and active participation of all nations, large and small whose peoples in heart and mind were dedicated to the elimination of tyranny and slavery, oppression and intolerance.

2.6.7 The Bretton Woods Conference (July, 1944)

The representatives of Forty four nations, acting on the assumption that no peace could last if economic and financial chaos prevailed met at San Francisco 'and drew up an agreement by which

(a) The International Bank for reconstruction and development.

(b) The International Monetary Funds were established. Both these agencies are now, actively functioning as specialized agencies of the' United Nations

2.6.8 The Dumbarton Oaks Conference (Aug-Oct 1944)

The Oaks conference held at Washington from Aug-21, 1944-to Oct. 7, 1944 was the next major step in the development of the United Nations charter. The proceedings of the conference can broadly be divided into two phases. In the first phase, representatives of United States/the United Kingdom and the Soviet Union conferred premix weeks on the main outlines, of the proposer international organization. In the second phase the representatives of the Soviet Union were dropped and replaced by those of china. The proposals for the establishment of a general International Organization were published on Oct. 9, 1944 and were sent to all the other United Nations governments for review. These proposals can very well be considered the first draft of the United Nation charter. However, they were briefer than the final charter, particularly in respect to economic and 'functional organization. However, the two documents basically resembled each other.

2.6.9 The Yalta Conference (Feb. 1945.)

The question of voting procedure in the Security Council which remained unsolved at Dumbarton Oaks, was taken up at the Yalta conference held in February, 1945 and was discussed there by President Roosevelt,' 'Prime Minister Churchill, Marshal Stalin. These powers also drafted plans for the Occupation and control of defeated Germany and for-keeping order in liberated Europe. The veto formula later embodied in the U.N. charter was also finalized at the Yalta Conference. Finally, it was decided to hold a full- Scale United Nations conference to Convene in san Francisco on April 25, 1945.

2.6.10 Mexico city Conference (Feb-March-1945)

The Representatives of twenty American republics met at Mexico and discussed questions of inter- American defense and co-operation. They, reached a: far-reaching understanding on the defense of America and prepared for the forthcoming san Francisco conference.

2.6.11 The San Francisco Conference (April-June-26 1945)

In accordance with the Yalta Schedule, 46 governments sent delegates to San Francisco and four additional governments were invited subsequently. The 282 delegates included foreign ministers Eden and Molotov and secretary of state sestinas as well as the foreign ministers of the lesser countries. These delegates brought with them some 1,444 assistants, The International Secretariat, consisting primarily of American Government Officials and professors topped 1,000. The world's press and radio services sent 2,636 of their leading writers and commentators to tell the story of the conference as it unfolded.

2.7 BIRTH OF THE UNITED NATIONS - (OCT. 24, 1945)

Two months of negotiations at San Francisco resulted in agreement by the participating nations to a document consisting of 19 chapters and 111 articles. The governments specified the purposes for which they were joining together accepted obligations, and created machinery for international collaboration and the process by which it would function. They also placed limitations upon the organization, two steps to guard their sovereignty, reserved to themselves the right to withdraw and anticipated the need for the review and probable modification at another constitutional conference. Appended was the "statute of the international court of Justice" of 5 chapters and 70 articles, all of which was considered an integral part of the charter.

The United Nations charter was signed on June 26, 1945. The charter came into force on Oct. 24, 1945 by which time China, France, Russia, the United Kingdom, the United States and a majority of the other signatories had ratified the document. It was launched on the perilous international seas on January 10, 1946 when the first session of the General Assembly commenced in London.

2.8 CONCLUSION

World Federalists and champions of international organization can agree that the world needs techniques and institutions capable of preventing war and mobilizing human and material resources in a vast effort to create a good society which encompasses the whole earth. The fundamental difference between them is that the former think in term of governmental institutions as the indispensable means for' the realizations of these purpose whereas the latter emphasize the ideal of obtaining governmental results by whatever methods may be tried and found useful. The world needs to be governed is not the same as saying that a world government must be erected. The essence of the problem is to identify and develop governing processes appropriate to the international system.

CHAPTER- III

POWERS, PRACTICE AND EFFECTIVENESS OF SECURITY

COUNCIL

“This is not a world Government. This is a World Meeting to talk over the passing dangers of our times and to hunt for the way to prosperity and world peace.”

D.C. Coyle

3.1 BACKGROUND:

The United Nations Security Council (UNSC) is one of the principal organs of the United Nations. According to article 24 of the UN Charter, the foundational treaty of the United Nations, the UN Member States have conferred the primary responsibility of maintenance of international peace and security to the Security Council and have agreed that this body, in order to carry on this duty, acts on their behalf. The Member States have agreed to accept and carry out the decisions of the Security Council through article 25 of the Charter¹⁴. While other organs of the United Nations can only make recommendations to governments, the UNSC is the only organ capable of issuing resolutions that are legally binding on all Member States.

The peace and security provisions of the Charter, which have the organization's focus in the Security Council, were initially prepared and adopted under the influence of the League experience, the events leading up to World War II, and the experience of the war

¹⁴ The United Nations, *Charter of the United Nations* (1945), United Nations Website,

itself. The Primary responsibility for the maintenance of international peace and security is placed on the Security Council. Until amended in 1965, the Charter provided that the Security Council should consist of five permanent members and six other members elected by the General Assembly for two-years terms, three members being elected each year. The names of the five permanent members were listed in the Charter, thus introducing an element of rigidity that did not exist in the case of the League Council. The principle professedly followed in determining the permanent members were that those members of the organization who had made major contribution to the winning of the war and who consequently would be expected to make the major contributions to keeping the peace should be in position to exercise corresponding influence on substantive decisions of the Council. Clearly, however, other considerations than these dictated the inclusion of France and the Republic of China, neither of who, at the time the Charter was written, gave promise of having this capability in the near future.

The Charter was prepared as well as the facts of international life gave assurance that the peace and security provisions of the Charter would reflect the special interests of the major powers and would be based upon a full recognition of the importance of the power factor in international relations.¹⁵ The initial preparatory work was done in the United States Department of State where a draft plan was prepared which was submitted to the governments of the United Kingdom, the Soviet Union, and the Republic of China, and was accepted by them as the basis for the discussions at Dumbarton Oaks in the summer and early fall of 1944. The Dumbarton Oaks Proposals, representing the agreement of the four

¹⁵ The recognition and legitimacy of the Taliban government: A conundrum ... (no date). Available at: https://www.researchgate.net/publication/361993438_The_Recognition_and_Legitimacy_of_the_Taliban_Government_A_Conundrum_in_International_Law (Accessed: February 1, 2023).

participating governments, with some additions, were submitted to the participating governments, with some additions, were submitted to the participants in the San Francisco Conference and were accepted as the basis of the discussion there. The work of the San Francisco Conference, from beginning to end, was governed by the basic principle that any proposal which was unacceptable to the major powers - the permanent-members-to-be of the Security Council would not be adopted, as their membership in the organization was considered essential¹⁶

3.2 COMPOSITION - ARTICLE 23

First plans were drawn up for an organization to maintain the postwar peace, it was clear that those countries primarily responsible for the conduct of the war against the Axis would occupy a “special” position within the new organization. It came to be realized, however, that any plan concentrating the power to maintain peace exclusively in their hands was unlikely to prove attractive to other nations. As a result, it was decided that the Security Council, the body primarily responsible for maintaining international peace and security should include a number of elected non permanent members representing the interest of all states in the preservation of peace.¹⁷

At the same time, the “Big Three” - The Soviet Union, the United Kingdom, and the United States - were expanded to the “Big Five.” Although skeptical of Roosevelt’s views of China’s ability to play a major role in the postwar world, Churchill and Stalin accepted the inclusion of China as one of the states that was to have a special position in the new Organizations. Churchill’s insistence upon including France among this small elite group

¹⁶ Leland, M. Goodrich, "The UNITED NATIONS", published by The Free Press, New York, 1972, p. 17-19.

¹⁷ Hilderbrand RC (1990) Dumbarton Oaks: The Origins of the United Nations

was accepted with somewhat similar skepticism by Roosevelt and Stalin as to the postwar position of France.¹⁸

Delegates assembled at San Francisco to adopt the Charter of the United Nations, they were faced with an agreement among the major powers that the Security Council of the new Organization should be composed of five permanent members and six members to be elected by the General Assembly. Although various proposals were made to modify the provisions regarding the composition of the Council, only one - concerning criteria for the election of non permanent members - was adopted.

3.3 PERMANENT MEMBERSHIP

The Charter lists the permanent members of the Security Council as the “Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.” At the San Francisco Conference, it was suggested that a phrase be added identifying the permanent members as those “having the greatest responsibility for the maintenance of peace” to justify the special position accorded them, but this suggestion was rejected.

The Charter also effectively blocks the development of a class of semi- or quasi permanent Council members by declaring that no retiring member is eligible for reelection to the Security Council. The guarantee of continuous membership in the Security Council is only one of the prerogatives accorded to the “permanent members” under the Charter. The concurrence of all five of them is, with few exceptions, needed before the Security Council

¹⁸ Leland M. Good Rich, "Charter of the United Nations", published by Colombia University Press, New York, (1969), p. 193

can make any substantive decision¹⁹. No amendment to the Charter can become effective unless ratified by all the permanent members²⁰. Indeed, the Charter itself could not come into force until all five had deposited their instruments of ratification. The special position of the permanent members with regard to the maintenance of international peace and security is further emphasized in other articles. They alone are members of the Military Staff Committee²¹. As a “transitional” arrangement²², these five powers were to “consult” with a “view to joint action on behalf of the Organization” for maintaining peace until the time when the entry into force of arrangements under Article 43 enabled the security Council to exercise its responsibilities under Article 42.

3.4 ELECTION OF NON-PERMANENT MEMBERS

At the San Francisco Conference there was widespread interest in criteria for selecting the nonpermanent members of the Security Council. The Latin America States, almost without exception, sought to assure the adequate representation of their region either through a “permanent” seat or a definite allocation of the non permanent seats. Others, such as Egypt and the Philippines, also favored some form of regional representation. Still others, some of the Western European states and some of the Commonwealth Members, sought to protect the position of the so-called “middle powers” by linking the distribution of Council Seats to the distributions of states to the maintenance of peace. Possible criteria considered during the discussions at San Francisco included the following;

¹⁹ Article 27 of UN Charter available at <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> viewed on 3rd March 2017.

²⁰ Article 108 and 109 of UN Charter available at <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> viewed on 3rd March 2017.

²¹ Article 47 of UN Charter available at <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> viewed on 3rd March 2017.

²² Article 106 of UN Charter available at <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> viewed on 3rd March 2017.

Geographical distribution, rotation, contribution of the members of the Organizations towards the maintenance of international peace and security and towards the other purposes of the Organizations, guarantees concerning the active defense of international order and means to participate substantially in it, Combinations of elements including population, industrial and economic capacity, future contributions in armed forces and assistance pledged by each member state, contributions rendered in the second World War, and so on; also special assignment of non-permanent seats to certain groups of nations.²³

3.5 DISTRIBUTION OF NON PERMANENT SEATS

The pattern established at the first session of the General Assembly for the distribution of non permanent seats in the Security Council was as follows: two for Latin America and one each for the Commonwealth, Western Europe, the Middle East, and Eastern Europe. This distribution was in part the result of a “gentleman’s agreement,” the exact nature of which has been the subject of controversy. It was decided to increase the number of non permanent members from six to ten. In its resolution approving this amendment to the Charter, the General Assembly decided that the seats should be allocated as follows” five for Africa and Asia; one for Eastern Europe; two for Latin America; and two for Western European and “Other States.” On December 10, 1965, the General Assembly held its first elections under the amended Article 23. It chose Argentina, Bulgaria, Japan, Mali and Nigeria for two year terms, and New Zealand and Uganda for one-year term.

²³ UNCIO, Documents, XI 676-77

3.6 REPRESENTATION

Each Member of the Security Council shall have one representatives. This is similar to the provisions for representation in the other two Councils and contrasts with the five representatives each member is allowed in the General Assembly. The Council's Provisional Rules of Procedure require that the credentials of a representative be communicated to the Secretary - General "not less than twenty-four hours" before the representative takes his seat on the Council. An exception is made for the heads of government and ministers of foreign affairs, who may sit on the council without having submitted credentials. In 1950 the Rules were revised to add a requirement that "credentials shall be issued either by the Head of the State or of the Government concerned or by its Minister of Foreign Affairs"²⁴

3.7 FUNCTIONS AND POWERS

Article 24 establishes the basic principle of the "primary responsibility" of the Security Council for the maintenance of international peace and security. By the term of this article, members not only "confer" this responsibility on the Council but agree that in carrying out its duties the Council "acts on their behalf". Any decisions of the Security Council taken in discharge of its responsibilities must, therefore, be considered as action taken by the Organization as a whole. All members share in any responsibilities the Council assumes and all are subject to any obligation it imposes. Decisions of the Council apply equally to any obligation in favor and those voting against, as well as to those members which, not being represented on the Council; have no opportunity to vote at all. This point has been of Special concern to some of nonpermanent council members.

²⁴ Rule 15

3.7.1 Primary Responsibility

The “Primary responsibility” for the maintenance of international peace and security upon the Security Council, the founders of the Organization recognized that organ as best fitted, by virtue of size and composition, to insure “prompt and effective action”. This effort to associate responsibility with power was viewed by many as one of the major advances of the Charter of the United Nations over the League system, in which the powers of the Council and the Assembly were largely identical. At the San Francisco Conference, numerous attempts were made to diminish the primacy of the Security Council, principally through enlarging the powers and responsibilities of the General Assembly and regional organizations. In both respects, provisions were added to the Charter spelling out these responsibilities in greater detail, but the primary position of the Council, particularly with regard to enforcement measures, remained intact, the Text of Article 243 corresponds to the Dumbarton Oaks draft with the single addition of a paragraph requiring the Council to submit reports for the consideration of the Assembly.

3.7.2 General Powers

“Specific powers granted to the Security Council” are laid down in chapters VI, VII, VIII and XII of the Charter. This statement raises the question whether the Council has these powers only or whether it may exercise such other powers, consistent with the purposes and principles of the Charter, as are necessary for it to discharge its responsibilities. The latter, more liberal interpretation has been generally accepted.

The general powers of the Security Council came up the first time the Council was called upon to consider a matter relating to the maintenance of international peace and security.

The specific question was whether the council could retain on its agenda the complaint by Iran against the Soviet Union despite a request by Iran that it be removed. The restricted interpretation of the Council's powers, as most fully developed in a memorandum by the Secretary-General, was that the Council could not retain its jurisdiction over the question in the absence of a specific exercise by the Council of its powers under Chapter VI. The majority of the Council members took a much broader view. The representative of Mexico, for example, held that Article 24 "invests the Council with implied power wider in scope than the specific powers" enumerated in paragraph 2 of that article.

3.7.3 Limitation on Powers

The Security Council "shall act in accordance with the Purposes and Principles of the Charter". The reference here is to the specific provisions of Article 1 and 2 of the Charter. The San Francisco Conference, various attempts were made to restrict the powers of the Council even further. Norway sought to alter the terms of Article 24 (2) so as to require the Council to act not only in accordance with "the purposes and principles of Charter" but also in accordance with the "provisions of the Charter, and the consideration that no solution should be imposed upon a State of a nature to impair its confidence in its future security or welfare." This proposal was defeated, as were more indirect efforts to limit the powers of the Council, such as the introduction of a definition of aggression, and the proposed alteration of Article 1 (1), which would have made the phrase "in conformity with the principles of justice and international law" apply not only to the functions of pacific settlement but also to any action taken with regard to threats to the peace, breaches of the peace, and acts of aggression.

3.7.4 Reports to the General Assembly

The Security Council has the primary responsibility for the maintenance of international peace and security; it is obligated to render an account to the General Assembly of the measures it takes in this regard. The Dumbarton Oaks Proposals recognized the right of the Assembly to receive such reports. At the San Francisco Conference, the statement of this function of the Assembly was expanded and the obligation of the Security Council reiterated by the addition of paragraph 3 to Article 24. The annual reports of the Security Council merely summarize the activities of the Council and in practice are not even discussed by the Assembly. It is not clear whether “special reports” are to be submitted when considered “necessary” by the Security Council or by the General Assembly. The only special reports the Council has submitted have been in connection with the admission of new members. Even when the Council has considered a matter at the instigation of the General Assembly, it has not considered it necessary to render a special accounting to the Assembly, although on occasion it has requested the Secretary General to transmit to the Assembly the records of its discussions.

3.7.5 Binding Force of Decisions

The United Nations under Article 25 are the direct consequence of the authority conferred on the Security Council under Article 24. If members agree that the Security Council, in discharging its “primary responsibility” for the maintenance of international peace and security, acts on their behalf, it is logical that they should also agree to accept and carry out decisions taken by the Council in discharge of that responsibility.

At San Francisco, Belgium sought to limit the obligations of members to those decisions taken by the Security Council in exercise of its powers under Chapter VI, VII and VIII of the Charter. Considered unduly restrictive by some delegates, this proposal failed to obtain the necessary two-thirds majority vote.²⁵ During the debate in the Security Council on the Statute for the Free Territory of Trieste, the Security General cited the rejection of the Belgian amendment to support the conclusion that members were obligated to accept and carry out decisions of the Council, whether taken in accordance with its general or specific powers.

3.8 VOTING – Article 27

Each member of the Security Council shall have one vote is a usual one and has not been the occasion of any controversy. The special interest of Article 27 and its highly controversial nature arise from the provision of paragraphs 2 and 3 which determine voting procedure and provide that in votes on nonprocedural matters, different consequences attach to the votes of permanent and nonpermanent members. Any one of the permanent members can prevent a decision from being taken on a nonprocedural matter, subject only to the qualification that a party to a dispute must abstain from voting.²⁶

The justification for it at the time the Charter was adopted was the special responsibility assumed by and placed upon the major military powers for the maintenance of international peace and security. Efforts to reduce the special voting privileges of the permanent members

²⁵ UN Doc A/c 1 /867, Sept. 24, 1962

²⁶ UN Security Council: A Veto Player Analysis. In Multilateralism and Security Institutions in an Era of Globalization, New York, NY: Rutledge. (1958) Part III p 232

at San Francisco failed because the major military powers made these the firm conditions of their participation in the United Nations.²⁷

At San Francisco, serious criticism was directed against the Sponsoring Governments proposals, particularly the third paragraph requiring great power unanimity for substantive decisions. Numerous amendments were proposed by other governments participating in the Conference which had as their purpose to restrict the so-called “veto power” of a permanent member.²⁸

A list of questions was prepared by representatives of members of the subcommittee other than the Sponsoring State, and was submitted to the latter for their answers. Their discussion extended over a two-week period. A direct appeal to Marshal Stalin in Moscow was necessary before agreement was reached that the veto would not apply to a decision to consider and discuss a dispute or situation. The Soviet Union insisted firmly that the requirement of concurrence of the permanent members should apply to the preliminary question whether a decision was on a procedural or nonprocedural matter. The four-power agreement took the form of a statement by the Sponsoring Governments with which France associated itself. It did not address itself directly to the specific questions that had been raised by the other delegates. The agreed statement was presented to the subcommittee by the United States delegate on June 8, 1945.

3.9 DECISIONS

Decisions of the Security Council shall be taken by “an affirmative vote of seven members”. This differed from the requirement for General Assembly decisions of a majority or two-

²⁷ Postwar Security by Robert C. Hilderbrand, *The J Modern Hist* 64: 771-773. P. 545

²⁸ UNCIO, Documents, XI, p. 774-78

third majority of the members present and voting, and for decisions of the Economic and Social Council and the Trusteeship Council of a simple majority of those present and voting. The Security Council requirement was introduced originally to insure that the support of at least two nonpermanent members would be necessary to a decision. With the increase in the size of the Council, the support of at least four nonpermanent members becomes necessary. The Council participates with the General Assembly in fixing the date and place of meeting of a General Conference to review the Charter, it takes its decision by a vote of any seven members. According to Council precedents, this would not be considered a procedural question and the vote prescribed must be regarded as an exception to the requirements of Article 27. A second exception occurs in connection with the election of judges of the International Court of Justice. When the Council is performing that function, along with the General Assembly, an absolute majority of votes is required for election. Furthermore, it is specifically stated that no distinction is to be made between permanent and non permanent members. The number of votes required to constitute an “absolute majority” has not thus far been in doubt as voting has always taken place with all members of the Council present. It would appear to be consistent with the interpretation given to the phrase at San Francisco to require an absolute majority of the total membership.²⁹

3.10 NON MEMBER PARTICIPATION - Article. 31

a) System of Participation

Rule 37 of the Provisional Rules of Procedure is worded almost identically with Art.31 of the Charter. According to these provisions, a non-member of the SC may participate in the

²⁹ Shabtai Rosenne. "The Law and Practice of International Court of Justice", published by Leyden Sijthoff, (1965), pp. 180-81.

deliberations of the Council if its interests are 'specially affected'. The literature so far seems to have assumed that no right to participation can be deduced from these rules, but this opinion stands on a weak legal foundation.³⁰

Rule 39, the SC is empowered to extend the right of participation in its deliberation to members of the Secretariat or to other persons, provided it considers that it may obtain information or other assistance for the discussion of measures within its jurisdiction by doing so. The provisions laid down in the Headquarters Agreement of 1947 indicate that the host state does not, as a rule, enjoy the right to deny entry to persons authorized by the SC on the basis of domestic immigration rules.

b) Pre-conditions to Participation

Art. 31 of the UN Charter only permit member states of the UN to participate in the discussion of the SC; non-members are invited to participate only when they are parties to a dispute (Art.32). The only pre-condition to participation under Art.31 consists in the requirement that the interest of the State concerned are, in the view of SC 'specially affected'. It is obvious that this wording will be open to interpretation in each individual case; the potential effects of a war in the nuclear age, for instance, highlight the relative character of the formula chosen in Art.31. In the light of the wording of Art.31, it might be argued that a State is not 'specially affected' if the consequences of a SC resolution touch upon fundamental interests of the international community as a whole. However, the

³⁰ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

practice of the SC has so far been to assume that the right of the State to participate is not diminished by the fact that other states of a region or continent are affected in the same manner. In addition to questions about the specific effect upon a state and about the distinctions between the respective situations of the individual state and the other states, there exists a question about the degree of intensity to which the interests of a state must be affected. To a certain extent, the wording of Art.31 avoids problems of interpretation in this context by allocating the power to decide 'such manners' exclusively to the SC.

c) Procedure of Participation

The initiative for the participation of a non-member can be taken either by the SC or by the State affected. No duty to participate on the part of the State invited by the SC can be deduced from the Charter.³¹ In practice, it will usually be the State affected which will make the request; in this case, the President of the Council will give notice of the application and will ask whether any objections are to be put forward. If no consensus exists in the Council, a vote on the request will follow. According to established, legally unobjectionable practice, this vote must be regarded as a procedural matter in which the right to veto is inoperative; in recent years the Soviet Union has not repeated its former view to the contrary.

3.11 INVITED MEMBER PARTICIPATION - Art. 32

a) Party to a Dispute

³¹ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

The rule lays down on the part of the SC to invite a non-member of the SC if it must be considered a party to a dispute; with regard to non-members of the UN, the special Rule in sentence 2 applies. The application of the term 'party to a dispute' has led to practical problems. The characterization of a situation as a dispute within the meaning of Art.32 will compel the legal conclusion that the parties to the dispute are required to abstain from voting (Art.27 (3)); this is relevant whenever members of the SC are involved. Once it has been accepted that a dispute exists, the duty to negotiate and the jurisdictional rules enunciated in

Chapter VI of the UN Charter will apply.

Construction would appear to be legally permissible and could facilitate a decision with regard to participation under Art.32 in the exceptional case. In practice, the J. X.A problems indicated here have been avoided by the Council in cases of doubt through reference to Art.31 instead of Art.32. This possibility for avoiding the constructive problems of Art.32, however, exists only where the participating states are members of the UN. In the case of non-members, whose participation is explicitly provided for in Art.32, participation on the basis of Rule 39 of the Provisional Rules of Procedure of the SC may at first sight offer an alternative. In the final analysis, this alternative is no solution, since the legal position of the State invited under Art.32 of the Charter is not identical to that of a person participating under Rule 39. Therefore, under these circumstances, the procedure indicated above, involving an explicit qualification on the right to participate and its attendant legal consequences might be preferable.

b) Participation by non member of UN

The participation of a non-member of the UN is at issue, there may be a controversy as to whether a state is involved or a non-state actor is involved. Art.32 of the Charter recognizes a right to participation in the deliberations, this legal situation may entail that, where a controversy exists over the statehood of the party concerned, the decision on participation under Art.32 may in some cases depend upon a judgment on the existence of a State. Thus, in 1948 the Council decided that, for lack of statehood, North Korea was to be invited not under Art.32 but under Rule 39. When Rhodesia filed an application to participate in 1966, the Council denied this request because of the illegality of the regime. When foreign troops invaded Czechoslovakia in 1968, the Soviet Union filed an application for allowing the German Democratic Republic to participate; the majority of the members of the SC rejected this application with reference, even then, to the lack of statehood of the territory occupied by the Soviet Union in Eastern Germany. In practice, the problem of legal and political consequences of admission under Art.32 could be solved in part through the qualification of a vote in favour of participation with a statement to the effect that no recognition of the entry concerned as a state was implied.³²

3.12 VETO

Article 27 of the UN Charter allows the permanent members of the Security Council to quash any non-procedural draft resolution with their negative votes, irrespective of its level of international support and popularity. This power is referred to as the “veto power” of the Permanent Five although the word “veto” is never mentioned in the Charter. The initial reason for the inclusion of this power in the Charter was to prevent the UN to take

³² The recognition and legitimacy of the Taliban government: A conundrum ... (no date). Available at: https://www.researchgate.net/publication/361993438_The_Recognition_and_Legitimacy_of_the_Taliban_Government_A_Conundrum_in_International_law (Accessed: February 1, 2023).

direct actions against any of its principal founding members. This section illustrates how the use of veto power has become distant from that initial reason and how this power has turned into a tool for protecting national interests of permanent members or their strategic allies. This power has been responsible for the silence of the Security Council on some major international conflicts including the 2003 Iraq War, the 2008 conflict in Georgia, the 2009 massacre of Sri Lankan Tamils and the recent Syrian conflict. Although the issue of Israel-Palestine conflict is on the agenda of the Security Council, this body has not been successful in condemning the violence and settlement activities through issuing resolutions.

3.12.1 Trend of Use of Veto Power after the End of the Cold War

The first veto was cast in February 1946 by the Union of Soviet Socialist Republics (USSR) and since then the permanent members have used their veto power a total of 263 times. However, there has been a considerable decrease in the use of veto in the last twenty years so that since the end of the Cold War and dissolution of the Soviet Union, only 22 vetoes were cast.³³ The period between 31 May 1990 and 11 May 1993 was the longest period without the use of veto³⁴. In general, during the 1990s not only in comparison with the previous decades but also in comparison with the following decade

³³ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

³⁴ Changing Patterns in the Use of the Veto in the Security Council, created in 2008, Global policy Forum Website http://www.globalpolicy.org/images/pdf/Z/Tables_and_Charts/useofveto.pdf, viewed on 23 February 2017

few vetoes were cast. From January 1990 to December 1999 only nine draft resolutions were vetoed while that number reached fourteen in the 2000s. As the result of the relatively sparing use of veto power, the number of resolutions passed by the UNSC in the course of the last twenty years has increased substantially. Before 1990, the UNSC would adopt an average of 15 resolutions each year. It has reached a substantial annual number of 62 resolutions in recent years³⁵. However, the following analysis of the use of veto power by each of the Permanent Five and the subjects of vetoed resolutions show although they vetoed fewer resolutions, the permanent members still use this power for the same reason, namely protecting their own interests or those of their allies as well as providing political cover for their strategic friends.

The Soviet Union (before it became the Russian Federation) used its veto power more than any other country. From 1946 to the time of its fall and the subsequent succession of Russia, this country vetoed a total of 119 resolutions. After Russia took the USSR's seat in the Council, it has used the veto power sparingly. So far Russia has blocked six resolutions, twice jointly with China.³⁶ As is provided in the table in Appendix I, Russia vetoed two resolutions on Cyprus while all other fourteen members of the Council voted in favour. Along with its extended interest in the Balkan region, this country vetoed a resolution on Bosnia and Herzegovina and after 2008 Russia-Georgia crisis, blocked the passage of a resolution that intended to extend the UN Observer Mission's mandate in Georgia and Abkhazia. Moreover, together with China, it did not let

³⁵ 35 Table on Number of Security Council Resolutions and Presidential Statements: 1988-2009, created 4 March 2009, Global policy Forum Website, http://www.globalpolicy.org/images/pdfs/Number_of_Security_Council_Resolutions.pdf, viewed on 23 February 2017.

³⁶ Changing Patterns in the Use of the Veto in the Security Council, http://www.globalpolicy.org/images/pdfs/Z/Tables_and_Charts/useofveto.pdf, viewed on 23 February 2017.

the Security Council condemn human right abuses in Burma and Zimbabwe; both these being important economic allies.³⁷

Since 1971 and after replacing the Republic of China, the People's Republic of China has used its veto power six times; four of them were exercised after the end of the Cold War. As mentioned above, China joined Russia in vetoing two resolutions which intended to condemn human rights abuses in Burma and Zimbabwe. Like Russia, China also had economic interests in these two countries. Burma is also politically important for China and its government is highly reliant on China for its current level of power. In addition to these two cases, in 1997 China vetoed a popular resolution which intended to authorize the deployment of observers to verify the ceasefire in Guatemala and in 1999 blocked a resolution regarding the extension of the operation of United Nations Preventive Deployment Force (UNPREDEP) in Macedonia. The reason for both of these negative votes was the political ties of Macedonia and Guatemala with Taiwan³⁸. Therefore, China used its veto power as a political weapon to punish countries for recognizing Taiwan as an independent sovereign state. This intention is more evident for the case of Macedonia which just one month before that resolution established diplomatic relations with Taiwan.

The last time France and the United Kingdom used their veto power was in 1989 in a joint veto with the USA on the situation of Panama³⁹. Therefore, these two countries have not vetoed any resolutions in the last 20 years. However, as I will

³⁷ Subjects of UN Security Council Vetos, created in 2009, Global policy Forum Website http://www.globalpolicy.org/images/pdfs/Z/Tables_and_Charts/vetosubj.pdf on 23 February 2017.

³⁸ *ibid*

³⁹ *Ibid*.

discuss later, France used the threat of veto on several occasions to prevent a matter coming to the Council for voting.⁴⁰

Overall, the United States of America is the second most frequent user of veto power. More importantly, in the period after the end of the Cold War, it has become the most frequent user. This country has vetoed 83 draft resolutions since the establishment of the UNSC; 14 of them were cast after 1991. What is noteworthy is that out of these 14 resolutions 13 were related to Israel and through blocking them, the USA has provided political cover and protection for Israel, its strategic ally in the volatile region of the Middle East. The USA has been active in preventing the UNSC from adopting resolutions condemning Israeli settlement activities in East Jerusalem, asking for the withdrawal of Israeli forces from Gaza, calling the construction of security wall in the West Bank illegal and many other cases that involved condemnation of actions carried out by Israel⁴¹. While explaining the current attitude of permanent members in avoiding frequent use of veto, Robert Hill admitted that there is an exception to that stance and that is “a category of Israeli resolutions that the US...because of domestic political reasons...will always veto”

For all of these thirteen resolutions, the USA was the only country which cast a negative vote (in some cases some of the members abstained as well but none of them joined the USA to vote against the draft resolution). Moreover, in three cases all other

⁴⁰ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

⁴¹ Ibid.

fourteen members of the Security Council supported the drafts. These facts illustrate the degree of political isolation of the USA regarding its stances towards Israel-Palestine conflict. It also demonstrates how the veto power enables a country like the USA to block popular resolutions, despite the unpopularity of its stance on that protracted conflict.⁴²

In July 2002 and during a closed-door meeting, John Negroponte, the United States representative in the United Nations, provided a statement which resulted in the “Negroponte Doctrine”. He clearly stated that any draft resolution regarding the Israel-Palestine conflict must contain four elements, otherwise the USA would veto it. Drafts have to: (a) explicitly condemn the acts of terrorism, (b) condemn by name the three groups of al-Aqsa Martyrs' Brigade, the Islamic Jihad and Hamas that were responsible for suicide attacks, (c) appeal to all parties for a political settlement of the crisis and (d) demand the improvement of the security situation as a condition for any call for withdrawal of Israeli forces to their position in September 2000⁴³. No draft resolution has condemned Hamas, al-Aqsa Martyrs' Brigade, and the Islamic Jihad by name but there were some drafts that condemned the actions of both Israel and Palestine. They were, however, also vetoed by the USA.⁴⁴

⁴² Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

⁴³ “The Negroponte Doctrine” concerning UN Security Council Resolutions on the Middle East, created 6 October 2003, United States Mission to the United Nations Website, <http://web.archive.org/web/20031224063630/http://www.un.int/usa/03jdn-me1006.html> viewed on 23 February 2017.

⁴⁴ As an example refer to S/2006/878

After the end of the Cold War, there was only one resolution vetoed by the United States which did not concern the Israel-Palestine conflict. On 30 June 2002, the USA vetoed a resolution intended to renew the United Nations peacekeeping mandate in Bosnia. The American representative gave an assurance that the decision “was not directed at the people of Bosnia”. The US previously threatened to veto the resolutions related to the UN peacekeeping missions if its request for the exemption of American peacekeepers from jurisdiction of the International Criminal Court (ICC)⁴⁵ were not met. The veto of the aforementioned resolution happened in order to materialize those threats⁴⁶. That action put pressure on the UNSC members to later adopt a resolution which asked the ICC not to exercise its power over the actions of UN peacekeepers for a year.⁴⁷

However, it is important to note that the permanent members are increasingly aware of the unpopularity of casting a veto and it is one of the reasons they tend to minimise its use. It is reported that despite the pressure from the pro-Israeli lobby, Washington came “very, very close” to not vetoing anti-settlement resolution in February 2011⁴⁸. It was mainly because of the popularity of the resolution and the fact that Washington is aware of the adverse political consequences of vetoing a popular resolution. As John

⁴⁵ Kanya D'Almeida, Dead Peace Process Could be "National Suicide" for Israel, created 16 February 2011, Inter Press Service News Agency, <http://ipsnews.net/news.aspx?idnews=54507.html> viewed on 23 February 2017.

⁴⁶ Nations Security Council, Security Council Rejects Draft Proposing Extension of United Nations Mission in Bosnia and Herzegovina, Security Council Press Release SC/7438, <http://www.un.org/News/Press/docs/2002/SC7437.doc.html>, viewed on 23 February 2017.

⁴⁷ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

⁴⁸ David Horowitz, How Palestinians will Use the GA to Advance Statehood, created 25 March 2011, The Jerusalem Post, <http://www.jpost.com/Opinion/Columnists/Article.aspx?id=213752> viewed on 23 February 2017.

Langmore mentioned, the fact that China is sensitive to international opinions played an important role in this country not casting a veto on UNSC resolution 1973. That resolution authorised the international community to establish a no-fly zone over Libya. China along with Russia, Germany, Brazil, and India just abstained from voting. Robert Hill also explained that China still and on every issue loudly proclaims “the sanctity of sovereignty, the right [of a country] to manage internal affairs without external interference” but has become increasingly reluctant to use that mantra to vote down any resolution.

Therefore, nowadays and more than before the permanent members tend to lobby to prevent a controversial matter coming to the Council. In these cases, they would not need to use their veto and be seen as an impediment to the maintenance of international peace and security. However, it is not a big step forward. Nowadays, countries are increasingly using threats of veto to keep an issue off the agenda of the Security Council and in order to protect their international legitimacy.⁴⁹

3.12.2 “Pocket Veto”

As mentioned before, instead of casting a veto and attracting criticism, countries increasingly prefer to use the “pocket veto” (namely the threat of the use of veto). They use that threat either implicitly or explicitly, either in the private meetings of the Permanent Five or in the larger Council. On many occasions, they managed to reach their intended outcome and could keep an issue off the Council’s agenda or soften the

⁴⁹ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

language of a resolution. The examples of “pocket veto” are abound. In this section I will focus on some examples which concern important or very recent international conflicts.⁵⁰

Although France has not cast any vetoes after the end of the Cold War, it has threatened to use that power on several occasions. The most prominent example was the case of 2003 Iraq war when France’s threats to veto any resolution that would automatically lead to a war successfully prevented the United States, the United Kingdom and Spain to present a draft resolution to the Council seeking to authorise military action (although France could not eventually prevent them from attacking Iraq).⁵¹ France also used the threat of veto recently. A non-violent protest in West Sahara was crushed by Moroccan forces in November 2010. France intervened to support its ally, Morocco. By threatening to use its veto, France could prevent the UNSC members from presenting a resolution to the Council to look into the crimes of the Moroccan military.⁵²

A careful analysis of the Security Council’s records shows that Russia and China are the two countries that have been relying on “pocket veto” more than other permanent members. Sri Lanka is an important ally of China and Russia and it is believed in the last phase of Sri Lankan civil war in 2009 many Sri Lankan Tamils were killed by the Sri Lankan army and the forces of Liberation Tigers of Tamil Eelam (LTTE). China and

⁵⁰ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

⁵¹ Tarik Kafala, *The Veto and How to Use it*, created 17 September 2003, BBC News Website, http://news.bbc.co.uk/2/hi/middle_east/2828985.stm, viewed on 23 February 2017.

⁵² According to the Report of the Secretary-General Panel of Experts on Accountability in Sri Lanka published on 31 March 2011, “a number of credible sources have estimated that there could have been as many as 40,000 civilian deaths”.

Russia managed well to keep that issue and an inquiry or a possible resolution on the crimes of the Sri Lankan army off the agenda of the Security Council.⁵³ A search through press statements and meeting records of the Council shows that issue was not adequately discussed in the Council and apart from issuing a press statement about the situation of Sri Lanka in May 2009, the UNSC did not take any other actions. In a press statement issued on 13 May 2009, the members of the Security Council expressed “grave concern over the worsening humanitarian crisis” in Sri Lanka and called for “urgent action by all parties to ensure the safety of civilians”. While condemning the actions of the LTTE, they raised concerns over the Sri Lankan army’s use of heavy caliber weapons in the areas with high population of civilians and asked the government to “fulfill its commitment in that regard”⁵⁴. Although the content of this press statement might sound powerful, it was the only action that the Council took. This inactivity of the Council is more unacceptable if the scale of that massacre is taken into consideration.⁵⁵

During the course of the conflict and its aftermath, Russia and China opposed the discussion of alleged violations in Sri Lanka (and considering they both are veto holders they have unusual power in blocking the discussion of some issues that are against their interests). The United Nations and its then Secretary-General, Ban Ki-Moon, were

⁵³ Hashimy, S.Q., Magoge, J.S. and Mokarim, A. (2022) [PDF] relentless violation of international humanitarian law during the ongoing conflict in Afghanistan: Semantic scholar, SSRN Electronic Journal. Available at: <https://www.semanticscholar.org/paper/Relentless-Violation-of-International-Humanitarian-Hashimy-Magoge/5a2641b2b29d47e546a646b5d2f58c8bbc1be38f> (Accessed: January 1, 2022).

⁵⁴ The United Nations Security Council, *Security Council Press Statement on Sri Lanka*, created 13 May 2009, United Nations Website, <http://www.un.org/News/Press/docs/2009/sc9659.doc.html> viewed on 23 February 2017.

⁵⁵ *Sri Lanka: UN Chief Should Establish International Inquiry*, created 25 April 2011, Human Rights Watch Website, <http://www.hrw.org/news/2011/04/25/sri-lanka-un-chief-should-establish-international-inquiry.html> viewed on 23 February 2017.

much more active regarding that conflict. The UN press releases shows that the Secretary-General on several occasions condemned the violence in Sri Lanka, raised concern about the humanitarian situation of that country and called on the Sri Lankan government to bring the conflict to an end. Moreover, a UN Panel of Experts was established and on 25 April 2011 released a report on accountability with respect to the final stages of Sri Lankan conflict. Concluding that both the Sri Lankan army and the LTTE forces committed grave human rights abuses, that panel recommended establishing an international independent investigation into abuses during the armed conflict. However according to Human Rights Watch, Russia and China intervened again and on 18 April 2011 signaled their reluctance to have Ban Ki-Moon take further action on that matter. On the other hand, the Secretary-General personally is not very willing to order an investigation and wants the Security Council to take action; something that principally due to the strong opposition from two of the veto-holder members has reached an impasse.⁵⁶

The most recent example of the use of “pocket veto” by Russia and China is the situation in Syria and the opposition of these two countries to the issuance of any resolutions by the Council despite the bloody crackdown of Syrian military forces on pro-democracy protesters.⁵⁷ The violence in Syria increased significantly to a level that even Russia reluctantly condemned it. Therefore, the European countries became

⁵⁶ Jake Lynch, *War Crimes in Sri Lanka and Political Options for Australia*, created 4 August 2011, Crikey Website, <http://www.crikey.com.au/2011/08/04/war-crimes-in-sri-lanka-and-political-options-for-australia/.pdf>, viewed on 23 February 2017.

⁵⁷ Hashimy, S.Q., Magoge, J.S. and Mocarim, A. (2022) [PDF] relentless violation of international humanitarian law during the ongoing conflict in Afghanistan: Semantic scholar, SSRN Electronic Journal. Available at: <https://www.semanticscholar.org/paper/Relentless-Violation-of-International-Humanitarian-Hashimy-Magoge/5a2641b2b29d47e546a646b5d2f58c8bbc1be38f> (Accessed: January 1, 2022).

hopeful that the revised version of the June draft could get enough support and would not get blocked by either (or both) of the veto holder countries of Russia and China. The new draft that was circulated in the Council in early August again intended to condemn the bloody crackdown of the Syrian protestors. However, the Russians once again opposed the draft. They said a resolution was too excessive and a Presidential statement would be “satisfactory”.⁵⁸ Russia was suspicious that any such resolution could turn out to be an initial step in a sequence, with calls for military action – should Syria not respond- next on the agenda. Russia blocked a Western-led effort at the U.N. Security Council on Wednesday to condemn its deadly gas attack in Syria and push Moscow's ally President Bashar al-Assad to cooperate with international inquiries into the incident.⁵⁹ It was the eighth time during Syria's six-year-old civil war that Moscow has used its veto power on the Security Council to shield Assad's government. In the latest veto, Russia blocked a draft resolution backed by the United States, France and Britain to denounce the attack in the town of Khan Sheikhoun and tell Assad's government to provide access for investigators and information such as flight plans.⁶⁰

Moscow was already concerned that NATO had, in Russia's view, exceeded the mandate given by United Nations Security Council Resolution 1973, on Libya. There, military action was provided for, to protect civilians, but Russian Prime Minister Vladimir

⁵⁸ Margaret Besheer, *UN Security Council Again Considers Syria Resolution*, created 1 August 2011, VOA News Website, <http://www.voanews.com/english/news/middle-east/UN-Security-Council-Again-Considers-Syria-Resolution-126555493.html> viewed on 23 February 2017.

⁵⁹ Hashimy, S.Q., Magoge, J.S. and Mokarim, A. (2022) [PDF] relentless violation of international humanitarian law during the ongoing conflict in Afghanistan: Semantic scholar, SSRN Electronic Journal. Available at: <https://www.semanticscholar.org/paper/Relentless-Violation-of-International-Humanitarian-Hashimy-Magoge/5a2641b2b29d47e546a646b5d2f58c8bbc1be38f> (Accessed: January 1, 2022).

⁶⁰ Russia blocks UN's Security Council condemnation of recent Syria attack <http://www.reuters.com/article/us-mideast-crisis-syria-un-vote-idUSKBN17E2LK> viewed on 10th April 2017.

Putin told reporters that “taking the side of one of the warring parties; [NATO] had committed a crude violation of the UN resolution”.⁶¹ So far, Russia and China have managed to block any resolutions. As they wanted, the Council merely published a Presidential statement⁶² which condemned widespread violations of human rights against Syrian civilians, called for immediate end to the violence, and urged all sides “to act in utmost restraint”. Reaffirming their commitment to the sovereignty and territorial integrity of Syria, the Council members called on the authorities to respect human rights and hold accountable those responsible for violence.⁶³

There are also some instances where the permanent members, Russia and China in particular, did not keep an issue off the agenda of the Council but managed to soften the language of the resolution issued by the Council. Iran’s nuclear program is an example. Russia and China considerably affected the second resolution on that program which was issued in December 2006. It was the first punitive resolution which imposed sanctions on Iran. Because Iran has been one of the important trade partners of Russia and China, the language of the resolution eventually issued by the Council was much softer than the original draft and the imposed sanctions were lighter.⁶⁴

⁶¹ Mary Dejevsky, *Putin attacks Britain and US for ‘violating Libya resolution’*, created 12 November 2011, The Independent, <http://www.independent.co.uk/news/world/europe/putin-attacks-britain-and-us-for-violating-libya-resolution-6261163.html>, viewed 10 March 2017.

⁶² Unlike resolutions, a presidential statement needs unanimity. When India, the Council president for the month of August, read the text of the presidential statement, Lebanon that has a pro-Syrian government dissociated itself from that statement. The Lebanese delegate said the text of the statement did not help address the current situation of Syria. Therefore, although that statement was issued, it did not have the requisite unanimity.

⁶³ The United Nations Security Council, *Security Council, in Statement, Condemns Syrian Authorities for ‘Widespread Violations of Human Rights, Use of Force against Civilians’*, created 3 August 2011, United Nations Website, <http://www.un.org/News/Press/docs//2011/sc10352.doc.htm>, viewed 10 March 2017.

⁶⁴ *UN Passes Iran Nuclear Sanctions*, created on 23 December 2006, BBC World News Website, http://news.bbc.co.uk/2/hi/middle_east/6205295.stm, viewed 10 March 2017.

An analysis of all seven UNSC resolutions regarding the nuclear program of Iran shows that Russia and China did not even abstain from voting and always voted in favour of all of the resolutions. Considering their stance towards Iran, one can conclude that they supported the resolutions because the final drafts which came to the Council for voting were in accordance with their interests and were drafted with attention to what they wanted. However, the support of these countries for Iran has decreased over the recent years mainly because of the economic incentives of Western and Arab countries⁶⁵ as well as Iran's continuous defiance and its opposition to compromise⁶⁶. However, there is still strong chance that these two countries will veto any resolutions authorizing military action against Iran in the future or they will use the threat of veto to prevent any such resolutions materializing.⁶⁷

3.13 INDIAN EFFORTS TO BAN PAKISTANI TERRORISTS IN UN GOES IN VAIN – ABUSE OF VETO BY CHINA

On June 24th 2015 China blocked an Indian bid to question Pakistan at the United Nations sanctions committee (per resolution 1267)⁶⁸ over the release of Zaki-ur-Rehman Lakhvi, a

⁶⁵ China is still a powerful country but the fact that one of the reasons for the shift in Russia's stance towards Iran has been economic incentives of some rich countries indicates that at least some of the permanent members of the Council are not the most powerful and stable countries of the world anymore. Therefore, some rich countries can dictate their own positions to them.

⁶⁶ Julian Borger, Medvedev: Sanctions against Iran's Nuclear Program 'May be Inevitable', created 24 September 2009, Guardian Newspaper Website, <http://www.guardian.co.uk/world/2009/sep/23/nuclear-iran-un-gcc-sanctions.html>, viewed 10 March 2017.

⁶⁷ Hashimy, S.Q., Magoge, J.S. and Mokarim, A. (2022) [PDF] relentless violation of international humanitarian law during the ongoing conflict in Afghanistan: Semantic scholar, SSRN Electronic Journal. Available at: <https://www.semanticscholar.org/paper/Relentless-Violation-of-International-Humanitarian-Hashimy-Magoge/5a2641b2b29d47e546a646b5d2f58c8bbc1be38f> (Accessed: January 1, 2022).

⁶⁸ Why China Snubbed India on a Pakistan-based Terrorist at the UN available at <http://thediplomat.com/2015/06/why-china-snubbed-india-on-a-pakistan-based-terrorist-at-the-un/>

commander in Lashkar-e-Taiba, an anti-India terror group, and a central planner in the November 2008 terror attack on Mumbai which claimed over 160 lives. Lakhvi was released on bail by a Pakistani court in April, a move that India alleged was in violation of resolution 1267. China's justification for blocking the Indian request—which sought clarification from Pakistan over Lakhvi's release—was that India “failed to provide enough information.” The move is the latest in a series of recent moves by China to block or stall Indian proposals on countering or sanctioning Pakistan-based terrorism.⁶⁹

China's move to block UN action is particularly remarkable given how reserved it has been in the past in being seen as the sole standout on an issue within the permanent five (P5) members of the Security Council. China's move was procedural within the UN sanctions committee, but it still stood in sharp opposition to the United States, the United Kingdom, France, and Russia—all of whom were ready to entertain the Indian proposal. China's effective “veto” on the matter should emphasize the extent to which Beijing is willing to publicly underwrite the Pakistani government's approach to terrorism

China has in the past blocked India's bids to get Jamaat-ud-Dawa (the political arm of Lashkar-e-Taiba in Pakistan) added to the United Nations Security Council's terror list three times (JuD was finally added to the sanctions list in December 2008). As leaked U.S. State Department cables revealed in 2010, China placed “technical holds” at Pakistan's request to block UNSC sanctions against Lashkar-e-Taiba and the al-Akhtar Trust (a charity front for Jaish-e-Mohammad, designated as a terrorist support organization by the United States). A similar “technical hold” was put in place in the case of India's request to list Syed

⁶⁹ Relentless violation of international humanitarian law during the ... (no date). Available at: https://www.researchgate.net/publication/357994013_Relentless_Violation_of_International_Humanitarian_Law_During_the_Ongoing_Conflict_in_Afghanistan (Accessed: June 1, 2022).

Salahuddin, a terrorist wanted in connection with numerous Hizbul Mujahideen attacks. Thus, China has a history of shielding Pakistan-based terror groups from sanctions under resolution 1267.⁷⁰

On March 31 this year, China, a veto-wielding permanent member of the UN Security Council, had blocked India's move to get JeM chief Masood Azhar⁷¹ designated a terrorist by the UN. Ties between India and China are set to take a hit after Beijing on Saturday said it has extended the decision to block New Delhi's appeal to the United Nations to label Pakistan-based Jaish-e-Mohammed chief Masood Azhar a terrorist.

Beijing's move to extend the "technical hold" imposed in April comes a day before it was to lapse, giving Azhar – an accused in the Pathankot Indian Air Force base attack in January – another six-month breather.⁷²

Earlier this year, China, in collaboration with Pakistan, had blocked India's bid to ban Azhar. Reports then said 14 out of 15 countries were willing to designate Azhar but China, with its veto powers, took the decision to block the move.

Beijing's decision – in the backdrop of the attack in Uri less than two weeks ago – brings into focus its stand on terrorism, on which, it has repeatedly said the West has "double standards". Though Beijing argued on Saturday – as before in April – that its decision was

⁷⁰ Relentless violation of international humanitarian law during the ... (no date). Available at: https://www.researchgate.net/publication/357994013_Relentless_Violation_of_International_Humanitarian_Law_During_the_Ongoing_Conflict_in_Afghanistan (Accessed: June 1, 2022).

⁷¹ China blocks India's move to ban Jaish chief Masood Azhar, again available at <http://www.hindustantimes.com/india-news/china-extends-veto-on-india-s-move-for-un-blacklisting-of-jaish-chief-masood-azhar/story-Ut9sxWSJGQJb5Rc70cIweM.html>

⁷² Relentless violation of international humanitarian law during the ... (no date). Available at: https://www.researchgate.net/publication/357994013_Relentless_Violation_of_International_Humanitarian_Law_During_the_Ongoing_Conflict_in_Afghanistan (Accessed: June 1, 2022).

based on facts and procedures, the latest decision brings into focus the close ties between China and Pakistan, who consider each other “all-weather allies”.⁷³

The above and previous examples show how the use of veto power has become distant from the initial reason it was included in the Charter. The actual use of veto or even the threat of its use can pressure other members of the UNSC to comply with the demands of the member who has that power. Therefore, the veto gives substantial power to France, the UK and to some extent Russia, who otherwise would not have much power. Robert Hill confirmed that the stance of each of the permanent members is important when a draft resolution is debated. Referring to the importance of North Korea for China or (at least until recently) Iran for Russia and China and the consequent delicate treatment of those issues by the Council, Robert Hill commented that “*the general direction [of the Council] at the moment is to go easy on the issues that are not of interest of some of the P5s*”⁷⁴

3.14 “UNITING FOR PEACE” RESOLUTION

It may seem that there is no preventive measure against the use of veto and limitless power of the permanent members. This is not the case. During the early phases of Korean War, the USA, concerned by the Soviet Union’s repeated use of veto power and fearing those actions might prevent the Council from protecting South Korea (considering that the USSR supported North Korea) took the matter to the General Assembly. With support from many countries the UN adopted a General Assembly

⁷³ ibid

⁷⁴ Personal Interview with Robert Hill, June 2011.

resolution called “Uniting for Peace” in November 1950.⁷⁵ This resolution reaffirms it is important that the Security Council carries out its responsibility in maintaining international peace and security and that the permanent members limit their use of the veto power. This resolution further recognises that the failure of the Security Council in fulfilling those tasks will not relieve the United Nations of “*its responsibilities under the Charter to maintain international peace and security*”.⁷⁶ Therefore, when the permanent members of the Security Council find themselves at odds and fail to reach unanimity on a matter that appears to be a threat to international peace and security, this resolution authorises the General Assembly to immediately consider that matter and issue its own “appropriate recommendations” to the Member States “for collective measures”. Those collective measures can include “*the use of armed force when necessary*”.⁷⁷ Therefore, one can conclude that this resolution gives the GA final responsibility rather than secondary responsibility. It can be held as a way to bypass the Security Council and a means for the General Assembly to overrule the vetoes of the UNSC P5 members.

Although not frequent, this resolution has been applied during the GA’s history. One successful example of its application was in 1981 when South Africa was preventing the independence of Namibia. The General Assembly by using this resolution recommended sanctions against South Africa and assistance (including military

⁷⁵ David Horovitz, *How Palestinians will Use the GA to Advance Statehood*, The Jerusalem Post, created 25 March 2011, <http://www.jpost.com/Opinion/Columnists/Article.aspx?id=213752>, viewed 10 March 2017.

⁷⁶ Relentless violation of international humanitarian law during the ... (no date). Available at: https://www.researchgate.net/publication/357994013_Relentless_Violation_of_International_Humanitarian_Law_During_the_Ongoing_Conflict_in_Afghanistan (Accessed: June 1, 2022).

⁷⁷ United Nations General Assembly, *Uniting for Peace* (1950), United Nations Official Documents, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/377%28V%29.pdf, viewed 10 March 2017.

assistance) to those who were fighting for Namibian independence. The resolutions passed by the GA using the provisions of “Uniting for Peace” are not binding (as none of the General Assembly resolutions are). However, because of their nature, these resolutions can carry more weight and can “press supportive countries to take actions”. It was what happened regarding South Africa. As Richard Schifter, the former US Assistant Secretary of State for Human Rights explains, the resolution on South Africa passed under “Uniting for Peace” principles, *“was a significant step in the process of imposing sanctions on apartheid South Africa and de-legitimizing the country.”*⁷⁸

Therefore, bypassing the Security Council is not impossible. It can happen through the use of “Uniting for Peace” resolution or possibly,⁷⁹ as was discussed before, through the concept of humanitarian intervention (although this issue is more controversial and has less support). However, many European and developing countries are reluctant to go through that path especially when a military intervention is involved. They are reluctant to consider such actions legitimate as they believe setting the Council aside, *“threatens the main rules that underpin international society”*.⁸⁰

The UNGA Resolution 377 or “Uniting for Peace” has been rightly used by Palestine. According to the UN, the recognition of a state is something that only other states can grant or withhold. Since the UN is not a state or a government it cannot recognize a state; it can

⁷⁸ Horovitz, *Palestinians to Advance Statehood*,
<http://www.jpost.com/Opinion/Columnists/Article.aspx?id=213752>.pdf viewed 10 March 2017.

⁷⁹

Relentless violation of international humanitarian law during the ... (no date). Available at:
https://www.researchgate.net/publication/357994013_Relentless_Violation_of_International_Humanitarian_Law_During_the_Ongoing_Conflict_in_Afghanistan (Accessed: June 1, 2022).

⁸⁰ Weiss, ‘Overcoming Security Council Reform Impasse’, p.31

only admit or not admit a state to its membership. In order to apply for the United Nations membership, a state has to submit an application to the Secretary General. Then the Security Council considers the application and if nine members out of the fifteen (including all Permanent Five) vote in favor, the Council through a resolution recommends the membership of that state to the General Assembly. In the Assembly a two-thirds majority vote is required for the admission.⁸¹

After the impasse in peace negotiations and continuation of Israeli settlement activities, Palestinian officials decided to seek UN membership. Anticipating that the United States will veto any UNSC resolutions recommending the admission of the state of Palestine to the GA,⁸² they intended to use “Uniting for Peace” resolution and therefore bypass the Council and go straight to the GA.⁸³ The experience of South Africa shows that Israel’s initial assumption that an overwhelming vote for the establishment of Palestinian state in the GA is merely declaratory is not true as under this Resolution the GA “has teeth”. As Horovitz discusses, the Israeli key players made the mistake of not effectively considering the different weight and “practical backing” that the “Uniting for Peace” can provide for the

⁸¹ War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

⁸² About UN Membership, United Nations Website, <http://www.un.org/en/members/about.shtml>, viewed 10 March 2017.

⁸³ War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

GA's recognition of Palestine (although it cannot eventually confer the UN membership on the state of Palestine).⁸⁴

On 29 November 2012, the General Assembly adopted resolution 67/19 entitled "Status of Palestine in the United Nations"⁸⁵ with 138 votes in favor, 9 against and 41 abstentions. The resolution accorded to Palestine non-Member observer State status in the United Nations, marking the first time that the General Assembly considered Palestine to be a State. The rights and privileges of Palestine in the work of the United Nations remained the same as they were enhanced by resolution 52/250, which gave Palestine maximum rights without becoming a Member of the United Nations.

3.15 CONCLUSION

Above discussions highlight the inherent tensions in the global power systems. Edward C. Luck observes that, "Debates over the composition of the Council, as well as over the veto power of the permanent five, reflect the inherent tension between the founding goal of assuring the leadership and collaboration of the nation's most capable of enforcing Council's will and the norms of universality and representatives espoused by a growing and increasingly diverse membership."⁸⁶ Along with these tensions, the Council is devoid of unity among its members over many issues.⁸⁷ Deliberations about a possible Security

⁸⁴ The recognition and legitimacy of the Taliban government: A conundrum ... (no date). Available at: https://www.researchgate.net/publication/361993438_The_Recognition_and_Legitimacy_of_the_Taliban_Government_A_Conundrum_in_International_law (Accessed: February 1, 2023).

⁸⁵ About Palestine membership to UN <http://palestineun.org/wp-content/uploads/2013/08/67-19-Status-of-Palestine.pdf> viewed 10 March 2017

⁸⁶ See Edward C. Luck, UN Security Council Practice and Promise, Routledge, 2006 at pg 20

⁸⁷ War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

Council reform and expansion have also taken place among scholars, NGO's, think tanks and some even at UN level. Kofi Annan said, "Unless the Security Council can unite around the aim of confronting massive human rights violations and crimes against humanity...then we will betray the very ideals that inspired the founding of the United Nations."⁸⁸

History shows that the SC has failed to keep its promise. Ingvar Carlsson's report found that the UN ignored evidence that genocide was planned and had refused to act once it began.⁸⁹

However, an action without a proper SC authorization threatens the international security system. The Council remained standstill when burning issues were lying on its table. Blame not only the Council, but also the geo-politics. The world summit clearly laid out that the SC should be the first port of call whenever it comes to intervention. The need of the hour is not to drag the discussion about SC's failures to act but to find ways that will enable the decision making process at the UNSC. Building institutional capacity is one of the keys for successful maintenance of peace and security. The institutions should be developed for all three core goals: responsibility to prevent, react and rebuild.⁹⁰

⁸⁸ See Carlsson's Report on Rwanda available at <http://www.preventgenocide.org/prevent/UNdocs/#carlsson>

⁸⁹ War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

⁹⁰ See Claire Applegarth and Andrew Block, Acting against Atrocities: A Strategy for Supporters of the Responsibility to Protect, Discussion paper #09-03, Belfer Center, John F. Kennedy School of Government, Harvard University, March 2009.

CHAPTER- IV

PEACE KEEPING MECHANISMS OF UNITED NATIONS – AN

ANALYSIS

4.1 BACKGROUND

“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”. The Charter of the United Nations, by adopting this principle in Article 2 (3), takes up again the efforts of those who have striven through the centuries to achieve the peaceful settlement of disputes between States.⁹¹ The United Nations has considered many specific aspects of the peaceful settlement of disputes; but the attempt at the 20th and 21st session of the General Assembly by the United Kingdom and a number of other States to bring about a broad study of this subject was brought to an end, before any meaningful debate could occur, by procedural moves, motivated by considerations unconnected with the merits of this subject. The purpose of this chapter is to consider certain general aspects of disputes and their settlement,

⁹¹ War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

including specific methods which have been or might be used for the settlement of disputes.⁹²

⁹² Sir Humphrey Waldock "The International Disputes", published by Europa Publications, London, (1972), pp. 57-59

4.2. METHODS OF PEACEFUL SETTLEMENT

4.2.1 Negotiation

Negotiations are the simplest method of peaceful settlement of disputes, in the sense that in negotiations the parties to the dispute alone are involved in the procedure. These negotiations may be bilateral or multilateral according to the number of parties to the dispute. Negotiations involve a continuing dialogue between the States parties, to the dispute. In order to reach a solution, one side or the other must make and argue" In support of proposals and counter-proposals until a proposal is made by one side and accepted by the other. If no such proposals are made, the procedure cannot advance.

Thus unsuccessful negotiation preceded the Ambatielos litigation in the International Court⁹³ and by arbitration, and also the Minquiers and Ecrehos case in the International Court⁹⁴; on the other hand, the dispute about British oil interests in Iran, which the International Court refused to decide, was finally laid aside after a negotiated commercial settlement⁹⁵. The need for flexibility is clear at the present time when one of the most serious disputes in the world is being pursued by procedures which cannot be considered purely the method of negotiation.⁹⁶ Thus, the present attempts to resolve the long-standing problems of the Middle East arise out of Security Council Resolution 242 (1967), the product of "parliamentary diplomacy" but which was based on extensive negotiations carried out between Members of the Security Council and between them and outside States

⁹³ Ambatielos (Greece v. United Kingdom) available at website of ICJ <http://www.icj-cij.org/docket/index.php?sum=81&p1=3&p2=3&case=15&p3=5> viewed on 15th March 2017.

⁹⁴ Minquiers and Ecrehos (France/United Kingdom) available at website of ICJ www.icj-cij.org/docket/files/17/2023.pdf viewed on 15th March 2017.

⁹⁵ Anglo Iranian Oil Co. (United Kingdom v. Iran), available at website of ICJ <http://www.icj-cij.org/docket/index.php?sum=82&p1=3&p2=3&case=16&p3=5> viewed on 15th March 2017.

⁹⁶ Hashmy, S.Q. (2022) War crimes in Afghanistan, uomeprints. WORLD AFFAIRS. Available at: <http://eprints.uni-mysore.ac.in/17384/> (Accessed: April 1, 2022).

of the area. That Resolution not only laid down principles which were generally accepted by the parties but asked the Secretary-General to appoint a Special Representative.⁹⁷

4.2.2. Mediation

Mediation, as a method of peaceful settlement of international disputes, means the participation of a third State or a disinterested individual in negotiations between States in dispute. The role of a mediator is well expressed in Article 4 of the Hague Convention on the Pacific Settlement of Disputes of 1899 as "reconciling the opposing" claims and appeasing the feelings of. Resentment which may have arisen between the' States at variance" Good offices are sometimes held to mean the action taken to bring about or initiate negotiations, but without active participation in the discussion of the substance of the dispute. In this restricted sense good offices are a mediation of more limited scope. But the terminology is not exactly applied, and good offices and mediation are sometimes used indifferently.⁹⁸

4.2.3 Arbitration

Modern international arbitration has changed little from the form which it emerged at the end of the nineteenth century as an independent process for the settlement of disputes and Article 15 of The Hague Convention of 1899 still offers the best definition: "International arbitration has for its object the settlement of differences between States by judges of their

⁹⁷ H.G. Darwin, "The International Disputes", Methods of Peaceful Settlement, published by Europa Publications, London, (1972), pp. 78-80

⁹⁸ Hashmy, S.Q. (2022) War crimes in Afghanistan, uomeprints. WORLD AFFAIRS. Available at: <http://eprints.uni-mysore.ac.in/17384/> (Accessed: April 1, 2022).

own choice, and on the basis of a respect for law".⁹⁹ The Administrative Council of the Permanent Court of Arbitration, which is composed of the diplomatic representatives of the signatory powers at The Hague and the Dutch Minister for Foreign Affairs, showed itself to be aware of this decline in resort to the Permanent Court of Arbitration when on 3 March 1960 it circularized States who were parties to The Hague Conventions of 1899 and 1907 on the fundamental differences between the procedure of the International Court of Justice and the Permanent Court of Arbitration and the possible modifications to be made in the arbitration procedure.

4.2.4 Adjudication

The International disputes has to be looked into in accordance with international law (Article 38 (1) of the Statute of the Court). Because of these features - third-party settlement and the application of law - the Court may be regarded as the culmination of a series of methods of settlement of international disputes. Arbitration brings together the concepts of third-party settlement and the application of rules of law. Courts of law take the matter a step further and formalize these concepts into a complete system. But, in the international sphere at least, it cannot simply be taken for granted that the establishment of courts of law would be to the profit of humanity.¹⁰⁰

4.2.5 Commissions of Inquiry and Fact-finding

Fact-finding is recognized as a separate procedure for the settlement of international disputes in Article 33 of the Charter of the United Nations, which requires the parties to any

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Hashmy, S.Q. (2022) War crimes in Afghanistan, uomeprints. WORLD AFFAIRS. Available at: <http://eprints.uni-mysore.ac.in/17384/> (Accessed: April 1, 2022).

¹⁰⁰ Hashmy, S.Q. (2022) War crimes in Afghanistan, uomeprints. WORLD AFFAIRS. Available at: <http://eprints.uni-mysore.ac.in/17384/> (Accessed: April 1, 2022).

dispute the continuance of which is likely to endanger the maintenance of international peace and security to seek a solution by "negotiation, inquiry, mediation, conciliation, arbitration, resort to regional agencies or arrangements or other peaceful means of their own choice".

4.3 PEACE - KEEPING

4.3.1 Formation

A survey of UN practice concerning military observer groups and peacekeeping forces reveals a uniform pattern for the formation of these units. The unit is formally created by the resolution of a UN organ, as a rule this is the SC, although in exceptional cases¹⁰¹ (UNEF I, UNSF/UNTEA) it was the GA. The resolutions generally support reports submitted by the SG which establish the mandate of these units as well as the details of their functioning.¹⁰² The next element is that there is an agreement between the parties concerned.¹⁰³ This may take various forms and be expressed either before or after the said resolution. The agreement may take the form of an agreement between the parties to a conflict, the acceptance of a resolution by those parties individually expressed by each of them or an agreement between the UN and the state on whose territory the unit is to function (the host state). The details of the relationship between the UN and the host state, however, are regulated in different ways.¹⁰⁴

4.3.2 Operations

¹⁰¹ First United Nations Emergency Force available at <http://www.un.org/en/peacekeeping/missions/past/unef1backgr2.html> viewed on 15th March 2017.

¹⁰² The recognition and legitimacy of the Taliban government: A conundrum ... (no date). Available at: https://www.researchgate.net/publication/361993438_The_Recognition_and_Legitimacy_of_the_Taliban_Government_A_Conundrum_in_International_law (Accessed: February 1, 2023).

¹⁰³ Hashmy, S.Q. (2022) War crimes in Afghanistan, uomeprints. WORLD AFFAIRS. Available at: <http://eprints.uni-mysore.ac.in/17384/> (Accessed: April 1, 2022).

¹⁰⁴ Suy, E. "United Nations Peace Keeping System", published by EPIL, p. 258.

The United Nations India-Pakistan Observation Mission (UNIPOM, 1965-66) In 1965¹⁰⁵ a dispute between India and Pakistan concerning The Runn of Kutch resulted in hostilities. Under the SC Resolution of November 5, 1965, UNIPOM was given the task of supervising the ceasefire and the withdrawals agreed upon by the parties. It was given additional functions under a further agreement on January 1966.¹⁰⁶

The United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP, 1988-90)¹⁰⁷ As part of a peace arrangement for Afghanistan achieved by the Geneva Agreement of April 14, 1988, both the Agreement on the Interrelationship for the Settlement of the Situation Relating to Afghanistan between Pakistan and Afghanistan and the related Memorandum of Understanding provided that the UN should offer its good services to the parties.¹⁰⁸

The United Nations Iran-Iraq Military Observer Group (UNIIMOG, 1988-91)¹⁰⁹ As a part of the arrangements which led to the acceptance of a cease-fire in the Gulf War between Iran and Iraq on August 9, 1988, UNIIMOG was created by SC Resolution 619 on the same day.¹¹⁰ That resolution approved, inter alia a report of the SG which set out the details of the

¹⁰⁵ See for further details <http://www.un.org/en/peacekeeping/missions/past/unipom.htm> viewed on 20th March 2017.

¹⁰⁶ The recognition and legitimacy of the Taliban government: A conundrum in international law (no date) Scribd. Scribd. Available at: <https://www.scribd.com/document/582621045/The-Recognition-and-Legitimacy-of-the-Taliban-Government-A-Conundrum-in-International-law> (Accessed: June 28, 2022).

¹⁰⁷- See for further details <http://www.un.org/en/peacekeeping/missions/past/ungomap/> viewed on 20th March 2017.

¹⁰⁸ The recognition and legitimacy of the Taliban government: A conundrum in international law (no date) Scribd. Scribd. Available at: <https://www.scribd.com/document/582621045/The-Recognition-and-Legitimacy-of-the-Taliban-Government-A-Conundrum-in-International-law> (Accessed: June 28, 2022).

¹⁰⁹- See for further details <http://www.un.org/en/peacekeeping/missions/past/uniimog.htm> viewed on 20th March 2017.

¹¹⁰ The recognition and legitimacy of the Taliban government: A conundrum ... (no date). Available at: https://www.researchgate.net/publication/361993438_The_Recognition_and_Legitimacy_of_the_Taliban_Government_A_Conundrum_in_International_law (Accessed: February 1, 2023).

functioning of the Group. It was not an armed force like UNEF, UNDOF, or UNIFIL, but an unarmed military observer team. Its functions, were determined by and developed with the cease-fire arrangements.¹¹¹

4.4 FORCEFUL FUNCTIONS

4.4.1 NATURE OF FORCEFUL FUNCTION

The primary reason for the establishment of the United Nations in 1945 was the maintenance of peace and security in the world. But the frequency of wars big and small since then testifies to the oft-repeated assertion that the UN security system has not worked as expected under the Charter. The search for security remains the primary concern of all states. Most of them do not seriously rely on the UN for their security requirements. Even today they depend mostly on their own strength of arms or that of their allies in times of need. This does not however reduce the UN to utter impotence. The UN has by various devices reduced the intensity of conflicts in various regions of the world. Its role in dispute settlement, arms control and "peace-building" through promotion of international cooperation in socio-economic fields will be discussed.

4.4.2 Collective Security

The UN's war prevention role as envisaged under the Charter has been called "collective-security"¹¹². The most common security arrangement since ancient times among

¹¹¹ Hashimy, S.Q. (2022) Analysis of the United States' liability for war crime in Afghanistan, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138859 (Accessed: June 28, 2022).

¹¹²- Handbook on the peaceful settlement of disputes between states, OLA/COD/2394 available at <http://legal.un.org/cod/books/HandbookOnPSD.pdf> viwed on 3rd April 2017.

independent states has been the military alliance. Balance of power refers to a system in which states rely on military alliances to further their individual security requirements. The concept of "balance" refers to such a distribution of power among states that no state is powerful enough to disturb the status quo through the force of arms. Alliances to deter prospective aggressors are formed by governments whose individual national interests are threatened by a common enemy.¹¹³ Such combinations generally have limited goals, are temporary in duration, and shifting in composition. The result might be deterrence through strength, compromise through bargaining or war through the collapse of the system.¹¹⁴

(a) Prohibition

It is true that the UN Charter is emphatic against the arbitrary use of force by states. But there are two major loopholes in the prohibition on the use of force: the first, under Art. 106¹¹⁵ and the second-under Art. 51 of the Charter. Art. 106 permits the Big-Five (pending the creation of a UN force based on national contingents supplied through special agreements referred to in Art. 43) to take any kind of joint action for maintaining world peace and security. So far, Art. 43 has not been implemented, and the possibility of close military collaboration among the five powers have also remained a distant possibility.

(b) Guarantees

¹¹³ War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

¹¹⁴ Hashimy, S.Q. (2022) Analysis of the United States' liability for war crime in Afghanistan, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138859 (Accessed: June 28, 2022).

115- Article 106 of UN Charter available at <http://www.un.org/en/sections/un-charter/chapter-xvii-0/index.html> viewed on 20th March 2017.

The Charter not only accepts the concept of collective protection, but also makes specific provisions on collective determination of a crisis (Articles 24 and 39), on collectivized forces (Arts. 43-45), and on collective, military policy and command (Arts. 45-47).

(c) Deterrence

Deterrence can be achieved only when collective power is overwhelming and irresistible. Overwhelming power for the UN can be built in two alternate ways either by building.

(d) Automatism

The Security Council has to determine the crisis and decide the measures, without any obligation to act quickly or automatically. The Council's response may start with provisional measures (Art. 40), and may be escalated to economic and diplomatic sanctions (Art. 41) and may ultimately reach the stage of military sanctions (Art. 42). In short, automatism is not a built-in feature of the UN security scheme.¹¹⁶

(e) Anonymity

In theory, the UN is expected to act against any aggressor to protect any victim anywhere in the world and at any time. But the UN cannot act against the Big Five, who can thwart any action of the Security Council any exercising their veto in their own favour. The Permanent Members can and do use their veto in support of their military allies. Sometimes a big

¹¹⁶ War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

power may use its veto to support the position of a non-aligned state. Such exercises of the veto may be purely political and subjective rather than legalistic or objective.¹¹⁷

(f) Assignability

One of the serious defects in the UN security system is the absence of a definition of "aggression" or armed attack. Under the Charter, the Security Council is expected to determine the nature of a crisis (Art. 39). without an objective definition of "aggression" the issue of determining a crisis often becomes a matter of political controversy.

4.4.3 Korea Case -1950

Korea was the first test of the collective security system envisaged under the UN. There an act of aggression was met with armed force under the aegis of international authority. Even though all the conditions of the UN Charter were not complied with (specially the condition of concerted action by all the five great powers), the defence of the Republic of Korea was undertaken by armed forces drawn from 16 nations. Let us examine the role of the UN in Korea to make a proper assessment of the collective security system. On June 25, 1950, North Korea attacked South Korea. Communist China later joined hands with North Korea in this aggression. The Security Council, in the absence of the Soviet Union, passed a resolution¹¹⁸ (9 to nil), fixing the responsibility for the armed attack on North Korea and called for an immediate cessation of hostilities and withdrawal of North Korean forces to

117- For discussion, see H. Nasu, International Law on Peacekeeping: A Study of Article 40 of the UN Charter, 2009, 225-233.

118- Complaint of aggression upon the Republic of Korea (7 Jul) Resolution 84, available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/84\(1950\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/84(1950))

the Parallel.¹¹⁹ As the North Korean authorities failed to comply with these directives, police action by the UN to repeal the attack was sanctioned by the Security Council. Thus the Security Council demonstrated that even though the UN had no armed forces at its disposal, it was not impotent in the face of open aggression. However, it is also true that the Council was able to agree on positive action due only to a series of self-imposed absences from the Council by the representative of the Soviet Union, and the presence of substantial units of American air, land and naval forces in Japan and adjacent areas.¹²⁰

The UN action helped preserve the independence of the Republic of Korea, but it brought no renewed enthusiasm for collective security on a voluntarily basis or otherwise. At first seen as the rebirth of collective military action, the Korean war proved to be its requiem. The reasons for this are now fairly well known and will now be discussed. The Korean war also highlighted the basic defects of the United Nations as an instrument for launching collective security operations. Its decision-making apparatus was shown to be unsuited to decisive action in times of crises.¹²¹ Only the absence of the Soviet delegate had made the initial Security Council action possible in Korea in 1950 though the Soviet Union insisted that Security Council resolutions adopted in its absence were void. Other members argued that an absence was the equivalent of an abstention, which, by precedent, was not a veto. Whatever the legal merits of the issue, the Security Council was immobilized by the

¹¹⁹ Hashimy, S.Q. (2022) Analysis of the United States' liability for war crime in Afghanistan, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138859 (Accessed: June 28, 2022).

¹²⁰- Gordenker, Leon, "The United nations and Peaceful Unification of Korea", published by Hague Nijloff (1969), p. 79

¹²¹ Hashimy, S.Q. (2022) Analysis of the United States' liability for war crime in Afghanistan, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138859 (Accessed: June 28, 2022).

Soviet return. Responsibility for decisions was then shifted to the General Assembly though that body proved too large, too unwieldy, and too much divided in counsel to direct a military operation effectively.¹²²

4.5 SANCTIONS

4.5.1 Reforming Sanctions

When the United Nations Security Council imposed comprehensive trade sanctions on Iraq on August 6, 1990 (Resolution 661)¹²³, it ushered in a new era of the use of coercive economic sanctions as a means of inducing compliance from states judged as violating international law. In the previous forty-five years of UN experience, the Security Council employed sanctions only twice, in the cases of Southern Rhodesia and South Africa. The next dozen years witnessed an active phase of Security Council decision-making, with more than seventy sanctions resolutions levied against fourteen distinct targets, including such nongovernmental entities as the Khmer Rouge in Cambodia, the Uniao Nacional para a Independencies Total de Angola (UNITA), and Al-Qaida.¹²⁴

4.5.2 The Iraq Sanctions

¹²² War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

¹²³-The situation between Iraq and Kuwait Resolution 661 adopted in 1990, available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/11/IMG/NR057511.pdf?OpenElement>

¹²⁴ War Crimes in Afghanistan - Indian Journals (no date). Available at: <https://indianjournals.com/ijor.aspx?target=ijor:wa&volume=26&issue=2&article=002> (Accessed: June 1, 2022).

The sanctions against Iraq were imposed in response to that country's invasion and occupation of Kuwait on August 2, 1990 (Resolution 661).¹²⁵ Essentially, they prohibited the import of Iraqi goods into all states, which in practice meant oil and oil products, and the sale or supply of all products to Iraq except for supplies strictly intended for medical purposes and, in humanitarian circumstances, foodstuffs. As a means to bring about an Iraqi withdrawal from Kuwait they were unsuccessful, but once the Gulf War (Desert Storm) had achieved that objective, the sanctions were in place to force Iraq's full compliance with the cease-fire conditions especially with regard to the destruction, removal, and rendering harmless of Iraq's weapons of mass destruction (Resolution 687). During the Gulf War most of Iraq's power plants, oil refineries, pumping stations, and facilities had been destroyed, and further sanctions aggravated the economic hardship. Before long this led to a humanitarian crisis, which the Secretary-General brought to the attention of the Security Council in the Ahtisaari Report of March 20, 1991¹²⁶. In response, it was agreed that the UN should develop a plan for using Iraqi oil revenues to finance humanitarian relief. In August and September 1991 respectively, the Security Council adopted Resolution 706 and 712 establishing the oil-for-food program¹²⁷. This provided for the sale of predetermined maximum volume of Iraqi oil under the supervision of UN purchasers would pay directly

¹²⁵ Hashimy, S.Q. (2022) Analysis of the United States' liability for war crime in Afghanistan, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138859 (Accessed: June 28, 2022).

¹²⁶ Report to the Secretary General on humanitarian needs in Kuwait and Iran in the immediate post crisis environment by a mission to the area led by Mr. Martti Ahtisaari under secretary General for administration and management, dated 20th March 1991 available at <http://www.un.org/Depts/oip/background/reports/s22366.pdf> viewed on 14th March 2017.

¹²⁷ Resolution 706 available at <https://documents-ddsny.un.org/doc/RESOLUTION/GEN/NR0/596/42/IMG/NR059642.pdf?OpenElement>, Resolution 712 available at <https://documents-ddsny.un.org/doc/RESOLUTION/GEN/NR0/596/48/IMG/NR059648.pdf?OpenElement> viewed on 14th March 2017.

into a UN-controlled escrow account, which would be used to pay for UN-approved purchases of foods, medicines, and materials and supplies for essential civilian needs.¹²⁸

4.6 HUMANITARIAN FUNCTION

Today world 'nations are interdependent, like mountain climbers attached to one rope. They can either climb together to the summit or all fall into the abyss. To prevent this from happening, political leaders must rise above narrow-minded considerations and realize how dramatic the contemporary situation is. This underscores the vital need for a new way of political thinking in the nuclear age.

4.7 FORMATION OF HUMANITARIAN FUNCTION

The international community has evolved a set of principles and rules of interstate cooperation in providing favorable conditions for every individual to enjoy the fundamental rights and freedoms both in peacetime and in periods of armed conflict.¹²⁹ In reaching decisions on intervention, the Council has to bear in mind not only the constraint of Article 2.7, but also the provisions under Articles 55 and 56 of the Charter and, in particular, the obligation of UN Members to cooperate for the achievement of universal respect for and observance of human rights and fundamental freedoms.¹³⁰

4.7.1 Sources

¹²⁸ Hashimy, S.Q. (2022) Analysis of the United States' liability for war crime in Afghanistan, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138859 (Accessed: June 28, 2022).

¹²⁹ Hashimy, S.Q. (2022) Analysis of the United States' liability for war crime in Afghanistan, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138859 (Accessed: June 28, 2022).

¹³⁰ Sydney, D. Bailey, "The U.N. Security Council and Human Rights", published by Quaker Peace and Service (1997), p. X.

The sources of international humanitarian law are above all the generally recognized fundamental principles of international law, lie United Nations Charter, and the charters of specialized agencies of the United Nations. At present, there exists a system of international treaties and agreements on human rights, which constitute the basic group of sources. These include: the international Convention on Economic, Social and Cultural Rights (1966), the international Convention on Civil and Political Rights (1966), the International Convention on the Elimination of all Forms of Racial Discrimination (1965), the Convention on the Suppression and Punishment of the Crime of Apartheid (1973), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968), the Convention for the Suppression of the Traffic in Persons (1950), the Convention on the Political Rights of Women(1953), a large group of conventions on labour and employment adopted by the International Labour Organization (ILO), and conventions on the right to education adopted by UNESCO.

4.8 NATURE OF HUMANITARIAN FUNCTION

4.8.1 Self-Determination

The word 'principle' was chosen by the founders deliberately, since it was realized that self-determination might in practice have to be balanced against other equally valid principles such as non-intervention in the domestic affairs of States or the territorial integrity of States. In 1960, the UN General Assembly declared that self-determination was not only a principle

but 'the right' of all peoples, and the two UN Covenants on human rights, approved by the General Assembly in 1966 affirmed 'the right' of self-determination.¹³¹

(a) South Africa

The treatment of persons of Indian origin in South Africa came before the General Assembly in 1946, and the wider question of apartheid in 1952. In 1960, following the Sharpeville massacre, 29 Afro-Asian States asked the Security Council to consider the situation in South Africa as a matter that was likely to endanger international peace and security. South Africa, supported by Britain and France, maintained that the issues raised were within South Africa's domestic jurisdiction and therefore outside the Council's purview. Italy thought there was a contradiction in the Charter between the provisions regarding human rights and the ban on intervening in domestic affairs. The United States, agreeing that there was tension between various provisions in the Charter, thought it desirable that the Council should at least consider the matter. The sponsors of the item argued that a State that was violating vital provisions of the Charter could not hide behind the ban on intervening in domestic affairs. At the end of the debate, the Council adopted a skillfully drafted resolution¹³², recognizing that the situation in South Africa had led to friction and 'might' endanger international peace and security, and asking UN Secretary-General Hammarskjöld 'to make such arrangements as would adequately help in upholding the purposes and principles of the Charter'. This was a typical formulation in the Hammarskjöld era.

131- G.A. Res. 1514 (XV), 14 Dec. 1960.

132- Security Council resolution 134 (1960) on the situation in the Union of South Africa arising out of the large-scale killings of unarmed and peaceful demonstrators in Sharpeville, available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/134\(1960\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/134(1960)) viewed on 25th march 2017.

4.8.2 Armed Conflict

The Protocol of 1 of June 1977 Additional to the Geneva Conventions relating to the protection of victims of *international conflicts*¹³³, where "armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes" are to be considered international conflicts. It reaffirms the international laws of the original Geneva Conventions of 1949, but adds clarifications and new provisions to accommodate developments in modern international warfare that have taken place since the Second World War. It also classes as international conflicts, armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination. This means not just another recognition of the legitimacy of the national-liberation movement, but also the duty to assist in every possible way, including armed assistance, to help dependent people exercise their right to self-determination.

An international organization which, under the UN Charter, can use its armed forces to stop or prevent aggression and to maintain peace and international security, can also become a party to an international armed conflict.

The International Red Cross and Red Crescent attaches great importance to the principles and norms of international humanitarian law, regarding them as powerful instruments of their national societies in protecting and assisting the victims of armed conflicts. The entire history of international humanitarian law is closely linked with this movement. It can be said that virtually all international agreements and treaties relating in any way to the

133- For further details see https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf

protection of human rights in armed conflicts and their humanization have been the result of wide-ranging initiatives of the international Committee of the Red Cross, the League of Red Cross Societies, and National Red Cross Societies, international legal norms establishing certain humane rules of warfare have done a great deal to reduce as much as possible the calamities, devastation, and the number of casualties caused by armed conflicts. Military history reveals that these humanitarian laws benefit above all the working people, who always have to bear the brunt of war.

4.9 HUMANITARIAN INTERVENTION

After the event of the 11 September (hereafter "9/11") terrorist attacks on New York and Washington, articles, monographs, anthologies, conferences, and symposia on "Humanitarian Intervention" were proliferating even faster than weapons of mass destruction. This metastasis of policy-focused cerebration coincided curiously with the paucity of the thing itself. Not, to be sure, of the exquisite suffering that was its notional target. Suddenly experiencing the pre-9/11 frenzy of debate about the legality, legitimacy, and appropriate occasions and instruments for humanitarian intervention, a stranger to our planet might fairly have concluded that every Western government with the means to project force beyond its frontiers, above all the United States Government, was straining against the leash woven out of normative uncertainties, awaiting only their resolution to hurt itself into the humanitarian fray.

4.9.1 Intervention after 9/11

How, if at all, has the war against terrorism triggered by 9/11 affected (or appeared likely to affect over time) the context of ideas, interests, and values in which humanitarian

intervention achieved prominence in discourse about foreign policy, if only erratically in foreign policy itself? In private conversations immediately after 9/11, some advocates of humanitarian intervention within the academic community pessimistically concluded that whatever the effect of the counter-terrorist war on terrorism, it would effectively eviscerate humanitarian intervention as an operative element in American foreign policy.

After 9/11, the Security Council, anticipating the US attack on Al-Qaeda and the Taliban regime, affirmed the right of the United States to act forcefully in its defense. Since Article 51 of the Charter recognizes an inherent right of self-defense, affirmation was unnecessary. In this unprecedented case of a large, well-financed transnational organization with demonstrably great destructive capacity and declaredly aggressive ends, the right can reasonably be construed to include seizure of suspected Al-Qaeda members in states unable or unwilling to arrest and either try or extradite them. But it plainly does not encompass the overthrow of regimes with records of aggressive behavior. Nor does it legitimise the use of force against states deemed unfriendly in order to deny them weapon systems already deployed by other sovereign states or to enforce compliance with treaty obligations¹³⁴. At this point, there is simply no cosmopolitan body or respectable legal opinion which could be invoked to support so broad a conception of self-defense. It is intact reminiscent of the notion of strategic preemption that animated German policy in the early years of the twentieth century.

4.10 HUMANITARIAN APPROACH

134- Jennifer M Welsh, "Humanitarian Intervention and International Relations" oxford publication 2003 PP 45-50.

The Security Council has, from the earliest years, appealed for death sentences not to be carried out, for the release of political prisoners, or for the release or exchange of POWs: in Kashmir, Indonesia, the Middle East, South Africa, Southern Rhodesia, Namibia, and Portuguese Territories.' In 1980, the Council condemned the assassination attempts against a number of Palestinian mayors in the territory occupied by Israel. Beginning in 1980, the Council began appealing for clemency for named persons in South Africa, including on several occasions Nelson Mandela.

4.10.1 Iraq

Iraq committed many violations of international human rights norms following its invasion and purported annexation of Kuwait on 2 August 1990. The International Committee of the Red Cross took the view that the conflict was an inter-State war, bringing into force the four Geneva Conventions and the First Additional Protocol, which inter alia prohibit the taking of hostages. Moreover, the Third Geneva Convention¹³⁵ prohibits the placing of POWs in areas where they may be exposed to fire in a combat zone or to render areas immune from military operations, that is to say, the use of POWs as 'human shields' (Articles 19 and 23), and such acts took place in January 1991 when POWs were paraded through the streets of Baghdad and thus exposed to public ridicule (Article 13); and the Fourth Convention prohibits 1 the taking of civilians as hostages (Article 34), the placing of protected persons so as to render points or areas immune from military operations (Article 23), and the denial to internees of sufficient food to keep them in a good state of health (Article 89).

135- III, Geneva Convention Relative To The Treatment Of Prisoners Of War Of 12 August 1949, available at http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf

Beginning some days after the invasion of Kuwait, Iraq started placing foreign nationals inside or close to military installations and denying food to foreign workers. The Security Council adopted four resolutions, two unanimously and two with Cuba and Yemen abstaining. These resolutions demanded that foreign nationals be allowed to leave Iraq, and that those choosing to remain be given 'immediate access to food, water and basic services'. The problems faced by the Iraqi Kurds had been drawn to the attention of the Security Council on two previous occasions: in 1963, by the Soviet Union, and in 1969 by the United States. In neither case had a meeting of the Council been held. In 1991, the question of 'safe havens' for the Kurds was raised in private consultations, in implementation of the Charter requirement of 'respect for, and observance of, human rights and fundamental freedoms' (Article 55.c of the UN Charter). A variety of methods were considered, and in the end, the Security Council adopted a resolution¹³⁶ which condemned the repression of Iraqi civilians, especially in the Kurdish areas; called on Iraq to end this repression which threatened international peace and security; and insisted that Iraq allow immediate access to international humanitarian organizations, and make available all necessary facilities to meet the plight of Iraqi civilians. It was presumably in pursuance of this resolution that Iraq agreed to accept the presence of 500 civilian UN guards. This latter agreement provided that UN personnel might include staff cooped from non-governmental organizations. Their task would be to provide humanitarian assistance. UN guards would be permitted to carry side-arms 'which will be provided by the Iraqi authorities (subject to the approval of the United Nations)'. By October 1991, the full complement of guards had been deployed, representing

136- United Nations Security Council Resolution 688, adopted on 5 April 1991 available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement> viewed on 5th April 2017.

35 different nationalities. A 'no-fly' zone was imposed above the 36th parallel, but without the express authority of a UN organ. One UN guard was killed by 'irresponsible Kurdish irregulars', to use the words of official Iraqi sources. As from August 1992, Iraq announced unilaterally that the 120 guards then in Iraq could remain, but no replacements or additional deployments would be permitted.

4.11 CONCLUSION

The U.N. Security Council has been able to make a valuable contribution by encouraging, on the one hand, constructive and forward looking solutions, and, on the other, by exercising restraint on those who may be inclined to press for extreme solutions by extreme methods. Perhaps the greatest contribution of the Organization to the work of peaceful settlement and adjustment is that it provides the means whereby disputes and situations can be considered" outside the narrow context of the parties' conflicting interests and with adequate attention to the larger interest in international peace and security, human freedom, and the general welfare which the United Nations represents.

As collective security measures can be undertaken only if the Security Council approves them by seven votes, including the votes of the permanent members, such actions are rendered impossible without a consensus amongst the permanent members. It was due to this difficulty that collective security action could be taken only twice during the long history of the UN. However, after the passage of the Uniting for Peace Resolution of 1950, the General Assembly was authorized to take action for the preservice of peace and security of the world in case the Security Council was not able to take a decision due to casting of the 'veto'.

War creates a host of humanitarian problems even if which regrettably is rare - the belligerents fully respect international humanitarian law (jus in bello). Civilians are harmed or displaced as an unintended consequence of attacks on legitimate military targets. Hospitals and places of worship are damaged or destroyed. New waves of refugees and displaced persons leave their homes in search of safe havens. And when the fighting stops, whether from the exhaustion of both sides or the military victory of one side and defeat of the other, the belligerents still have to patch up the quarrel which caused the war in the first place. General Sherman, who knew what he was talking about, said that war was hell for the boys who had to do the fighting.

CHAPTER V

ROLE OF UN IN PURSUIT OF PEACE IN AFGHANISTAN

5.1 BACKGROUND

Afghanistan is facing war and violence since its inception as a distinct political entity in 1747. Taking recent history into account; after the Soviet Union's invasion, the country had fallen into civil war from 1992 to 1996. Many factors such as social divisions, cultural mores, and geographical location, among others, have been instrumental in determining the course of Afghan history and in laying the foundations for preventing the Afghans from

developing the necessary attributes of a strong state with a lasting stable political order”.¹³⁷

Violence in Afghanistan can be categorized into two types; both Direct and Structural violence.

Taking the above scenario into consideration, ‘enduring peace’ in Afghanistan is not only seeking to eliminate violence, but also to bring positive interaction between state and society, and among various segments of the society as well. This can be done by addressing both forms of violence, i.e. direct and structural. It includes bringing Taliban on the negotiation table to address the grievances of the local population. All these call for a role of UN to be played in Afghanistan to bring peace there.

Role of UN in building peace in Afghanistan can be traced back to 1980s when an emergency session of UN Security Council, held between 10 and 14 January 1980 as an aftermath of USSR’s Afghanistan invasion, passed the resolution ES-6/1.¹³⁸ There are currently 16 UN peacekeeping operations and one special political mission – the United Nations Assistance Mission in Afghanistan (UNAMA) – led by the Department of Peacekeeping Operations.¹³⁹ It is mentioned in the mandate of UN that UNAMA is there in Afghanistan with mission to support the aspirations of Afghan government in security, stability, and democracy. Besides its mandate covers all aspects which are important to establish enduring peace in Afghanistan e.g. commitment to strengthen the local

¹³⁷ Parin Dossa (2013) Structural Violence in Afghanistan: Gendered Memory, Narratives,

¹³⁸ General Assembly’s 6th Emergency Session. Accessed from <http://daccessddsny.un.org/doc/RESOLUTION/GEN/NR0/209/43/IMG/NR020943.pdf?OpenElement>

¹³⁹ Current Peace Keeping Operations, United Nations Peace Keeping. Accessed from <http://www.un.org/en/peacekeeping/operations/current.shtml>

governments, rule of law, development, co-ordination to international civilian assistance, support for ongoing transition to Afghan security.¹⁴⁰

UN has done a lot in Afghanistan to soften the grounds for enduring peace, e.g. peace keeping operation, passing resolutions, signing of Enduring Partnership agreement, advisory role to high peace council, support for survival of Afghan National Army, and efforts in countering terrorism. Afghanistan is still in need of a UN role to be played in terms of dealing with not only direct but also structural violence so that Peace can be gained and maintained in Afghanistan.

Unfortunately, multiple factors have been instrumental in determining the course of Afghan history and in laying the foundations for preventing the Afghans from developing the necessary attributes of a strong state with a lasting stable political order”.¹⁴¹ Violence in Afghanistan can be categorized both direct and structural violence.

While focusing on the strategies against pro-western elements and accentuating on making the state an Islamic state, the collapsing state and society in Afghanistan has been neglected. Besides that the one element which contributes towards the destructive phase is the internal discord which revolves around different tribes, ethnic groups, and on religious and ideological lines. There was a quest for power and struggle for autonomy which resulted in intergroup violence. A ray of optimism emerged when Taliban came into power. They were the followers of a slogan which contained the ingredients which were needed then for the recipe to make Afghanistan peaceful, stable, end warlordism and above all to create a national unity. But very soon all the ethnic minorities were unified to fight against *pakhtun*

¹⁴⁰ 4Michelle Barsa, Finding a Role for the UN in Afghanistan, 27th March, 2012. Accessed from http://www.huffingtonpost.com/michelle-barsa/afghanistan-war-unama_b_1383594.html

¹⁴¹ David Cortright, *Peace: a History of Movements and Ideas*. 2008. Cambridge University Press. P 1-3

Taliban as they realized that slogan given by Taliban was deceptive and false. Despite serving the interests of Afghans the Taliban regime looked like a supportive regime to serve the interests of foreign militant groups in their respective country. So, Hazaras, Uzbeks, and Tajiks started reclaiming their stake, their territories, and their power sharing in Afghanistan. In the aftermath of the 9/11 episode and resultant GWOT,¹⁴² whether effort of international community to rebuild the country through reconstruction model will be able to deal with question of regional interests and identity or not, is still an important question. For the sake of achieving stability and peace in Afghanistan, the role of UN is very important.

5.2 PEACE AS UN AGENDA

People, since the recorded human history are looking for alternatives of war. So efforts have been and are being made to find the alternative of war. These alternatives can be seen in the form of various initiatives taken by the United Nations and talked about in following paras. The debate of using non-violent measures to end the violence is often considered as “doing nothing”. But it is not applicable in case of UN.¹⁴³ It has its focus from international to state, and then to individual level. To maintain peace, to protect and save the individuals is the core concern of UN. As it is stated by Kofi A. Annan (former UN Secretary General), “No shift in the way we think or act can be more critical than this: we must put people at the centre of everything we do.” In 1999, Gallup International sponsored and conducted a Millennium Survey of 57,000 adults in 60 countries. The survey showed that most people around the globe considered the protection of human rights to be the most important task for the United Nations. The younger the respondents, the greater the importance assigned to this

¹⁴² Global War On Terrorism accessed from <http://www.globalsecurity.org/military/ops/terror-ops.htm>

¹⁴³ D Welch, The Art and Ethos of enduring peace Zine publication (2006) from <http://www.tikkun.org/nextgen/the-art-and-ethos-of-enduring-peace>

goal. United Nations peacekeeping and the provision of humanitarian assistance were also stressed. Globally, less than half of those interviewed judged the performance of the United Nations to be satisfactory.¹⁴⁴

As per United Nations Charter which came into force on 24 October 1945, and was signed on 26 June 1945, it is established as the aim “to save the succeeding generation from scourge of war”¹⁴⁵

To achieve this aim, UN is and has been working under a particular code of conduct:-

Dress, think, talk, act and behave in a manner befitting the dignity of a disciplined, caring, considerate, mature, respected, and trusted soldier, displaying the highest integrity and impartiality.

Treat the inhabitants of the host country with respect, courtesy, and consideration. You are there as a guest to help them...neither solicit nor accept any material reward, honor or gift.

Do not indulge in immoral act of sexual, physical or physiological abuse or exploitation of local population - especially women and children.

Respect and regard human rights of all.

Exercise the utmost discretion in handling matters of official business which can put lives in danger.¹⁴⁶

¹⁴⁴ Kofi A. Annan, We the people, The Role of United Nation in 21st Century. 2000. United Nations Department of Public Information New York. Accessed from

http://www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf

¹⁴⁵ United Nations, accessed from <http://www.un.org/en/sections/un-charter/introductory-note/index.html>

¹⁴⁶ Thomas w. Jacobson, UN Peace keeping; Few Successes, Many Failures, Inhernt Flaws. International Diplomacy and Public Policy Centre. 2012. Access from

<https://drive.google.com/a/ndu.edu.pk/file/d/0B4clmkQION-kUXNTVmxRdWF0Vzg/view>

International community is in search of conflict management. As far as the vital components of conflict management are concerned, UN peace operations are vital for peace. They are used by Security Council whenever such climate arises which poses threat to international peace and security. Since the end of cold war the nature of conflict has changed, in response to deal with the changing environment, operations have grown with evolving peace building agenda. For the sake of international peace and security, UN currently has deployed 115,000 uniformed and civilian personnel in conflict affected areas. Their maintenance cost is about \$7 billion per year.¹⁴⁷

5.3 UN ACCOMPLISHMENTS IN BUILDING PEACE IN AFGHANISTAN

UNAMA is led by its Department of Peacekeeping Operations.¹⁴⁸ It is mentioned in the mandate of UN that UNAMA is there in Afghanistan with mission to support the aspirations of Afghan government in security, stability, and democracy. Besides, the mandate covers all aspects which are important to establish enduring peace in Afghanistan.¹⁴⁹ To accomplish the above mentioned mandate UN has done the following tasks in Afghanistan.

➤ **Efforts in countering terrorism.** On 1st October 2010, Former UN Secretary General Kofi A Annan said, "As we summon the will and the resources needed to succeed in the struggle against terrorism, we must also care for all the victims of terrorism, whether they are direct targets or other populations who will be affected by our common effort. That

¹⁴⁷ Charles T. Hunt, *UN Peace Operations and International Policing: Negotiating Complexity, assessing Impact and Learning to Learn*. Routledge. 2015. p.1

¹⁴⁸ *Current Peace Keeping Operations*, United Nations Peace Keeping. Accessed from <http://www.un.org/en/peacekeeping/operations/current.shtml>

¹⁴⁹ Michelle Barsa, Finding a Role for the UN in Afghanistan, 27th March, 2012. Accessed from http://www.huffingtonpost.com/michelle-barsa/afghanistan-war-unama_b_1383594.html

is why I have launched an alert to donors about the potential need for much more generous humanitarian assistance to the people of Afghanistan.”¹⁵⁰

➤ **Bilateral Security Agreement (BSA).** With signing BSA, Afghan National Security Forces (ANSF) are saddled with an unfinished task which they have in shape of promises to Afghan people, by fighting against heavy odds. They lack ammunition, arms, and latest technology. The role of international community is very important in this regard.

➤ India has spent \$2 billion on various projects to strength the ANSF under strategic agreement signed between India and Afghanistan.¹⁵¹ BSA was necessary in sustaining the ANSF and Afghan political system, besides it would illustrate an international presence and international financial assistance which was much needed for the government in post 2014 scenario to run the infrastructure of Afghanistan.¹⁵²

➤ **Law and Order.** Alain Le-Roy, former Under-Secretary General for peacekeeping, while talking about UN Police (UNPOL) once commented, “Without law and order there can be no peace, without peace there can be no law and order”¹⁵³ UN since its presence has played its role to establish law and order in Afghanistan.

➤ **Advisory to High Peace Council.** Besides the UN role in security sphere of Afghanistan, the role of UNAMA is vital, as it plays its role to advice the Afghan High Peace Council that an all inclusive peace process will make Afghanistan able to witness enduring peace. UNAMA can also play a key role in making the Afghans recognize that

¹⁵⁰ Afghanistan and United Nations, accessed from <http://www.un.org/News/dh/latest/afghan/un-afghan-history.shtml>

¹⁵¹ Tazakhabar New.com. accessed from <http://taazakhabarnews.com/will-enduring-peace-afghanistan/>

¹⁵² Vishal Chandra, *The Unfinished War in Afghanistan (2001-2014)*. Institute for Defence Studies and Analysis. 2014. 302

¹⁵³ Charles T. Hunt, *UN Peace Operations and International Policing; Negotiating Complexity, assessing Impact and Learning to Learn*. Routledge. 2015. p. 1.

how a wide array of Afghan national leadership can play their role in strengthening the Afghan institutions, along with the role of sub national leaders in enhancing their role in arena of local governments.¹⁵⁴

➤ **Survival for Afghan National Army.** With the withdrawal of foreign forces, a transition of security areas has been seen from foreign to Afghan forces which are not yet in a mature form, neither in capabilities nor in numbers. So in order to transform into a cohesive force, they will need foreign support in terms of funding, mentoring, and regular supply and maintenance of arms and equipment. International support is essential at times where state is dysfunctional and polity is fragmented; 350,000 numbers of forces by no means are able to make the country stable. So support is needed to build a professional force with sufficient troops, enough material strength, and which is ethnically balanced.¹⁵⁵

5.4 COLLECTIVE ENGAGEMENT OF UN AND AFGHANISTAN.

Talking about the fall of Taliban and role of UN, it is important to mention here that reports released on 6 September 2006 by UN Secretary General illustrated that one third of Afghanistan is racked by violent insurgency. So UN was required to speed up its efforts to address the situation.¹⁵⁶

➤ **Resolution 1386.** According to Chapter 7 of UN Charter,

¹⁵⁴ Michelle Barsa, Finding a Role for the UN in Afghanistan, 27th March, 2012. Accessed from http://www.huffingtonpost.com/michelle-barsa/afghanistan-war-unamb_1383594.html

¹⁵⁵ Vishal Chandra, The Unfinished War in Afghanistan (2001-2014). Institute for Defence Studies and Analysis. 2014. 302-303

¹⁵⁶ Jean-Rodrigue Paré, Afghanistan; UN intervention. Political and Social Affairs Division-2007. Accessed from <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0726-e.htm>

Security Council passed the resolution 1386 on 20th December, 2001. As per this resolution, a peace keeping force was deployed in Afghanistan in 2001. As per the Resolution, Afghans were allowed to enjoy the right of freedom. Besides, it accentuated the need to establish the government in Afghanistan according to proceedings of Bonn Conference held on 5th December 2001.¹⁵⁷

➤ **Resolution 1833.** UN while passing the resolution 1833 on 22 September, 2008 extended the presence of ISAF in Afghanistan till 13th October 2009. It reaffirmed the UN commitment towards Afghanistan's sovereignty, territorial integrity, independence, and national unity. Resolution 1833 also emphasized on not harming the Afghan civilians, as increased violence would hamper the stabilization agenda in Afghanistan.¹⁵⁸

➤ **Increased boots on grounds.** President Barak Obama in his speech (made on December 1, 2009) announced to increase number of troops in Afghanistan to total 30,000.¹⁵⁹

➤ **Enduring Partnership Agreement.** The agreement was signed in 2012 between Afghanistan and US. It says that US will stay in Afghanistan till 2024. As a result, forces have changed the strategy to deal with the threat while moving away from counter insurgency to a counter terrorism operations with limited military capabilities and assets.

➤ **UNEP and NEPA.** On 21st September 2015, United Nations Environmental Program and Afghan National Environment Protection Agency (NEPA) celebrated 7th Annual 'Peace

¹⁵⁷ Resolution 1386 (2001), UN security Council. 20th December 2001. Accessed from <https://www.globalpolicy.org/images/pdfs/sc1386.pdf>

¹⁵⁸ Resolution 1833 (2008), UN Security Council. 22 September 2008. Accessed from <https://www.globalpolicy.org/images/pdfs/0922res1833.pdf>

¹⁵⁹ Tim Fernholz, Dodging the Real Questions on Afghanistan. Global Policy Forum. December 2, 2009. Accessed from <https://www.globalpolicy.org/us-military-expansion-and-intervention/afghanistan/48506.html>

Trek’ which is being celebrated globally since last seven years. Its aim was to create awareness amongst public about those aspects which are generally comprised in civil society, and are related to importance of peace and environment protection in Afghanistan. During the session, issues of natural resources, environment and depletion of resources as a cause of generating conflict came under serious discussion.¹⁶⁰

While taking a glance of the challenges being faced by present unitary government, it is revealed that they are not different from those faced by Karzai Government. These challenges include; managing the interest of different and diverse population, informal power structures, and sub-national level resistance from the militant groups. These are the core issues; others ranging from governance to human security demand a separate debate.

5.5 DEVELOPMENT FOR PEACE IN AFGHANISTAN

From year 2000 onwards a lot of development took place in policy reforms of United Nations. The Brahimi Report is considered the starting point of reforms since 2000. A panel on United Nations peace operations, chaired by Mr Lakhdar Brahimi, in 2012 assembled to discuss the major challenges which UN faced during peace operations. Later, Capstone doctrine came on the stage in 2008 which acknowledged that UN had been working without clear guidance on peace keeping. So it outlined core functions and strategies for UN peace keeping missions. Whereas in 2009 another initiative was taken in terms of New Horizon.

¹⁶⁰ Afghanistan's Seventh Annual Peace Trek on International Day of Peace, United Nation Environment Programs (UNEP). Accessed from <http://www.unep.org/disastersandconflicts/Default.aspx?tabid=1060565>

Challenges were identified as were identified in Brahimi Report and areas were suggested to improve UN peace keeping.¹⁶¹

5.5.1 Stabilization Agenda

As per an estimate there are 40 to 60 fragile states in the world. In this regard, the role of United Nation is very important, which, through, rule of law, preventive diplomacy, peace keeping, and peace building strategies tries to manage stabilization projects in fragile states. Owing to this aspect, there are two viewpoints available, where, first, is in favor of a ‘military’ style of operations, whereas second accentuated upon ‘developmental’ aspects of stabilization. In a nutshell, UN mission are often sounded like from peacekeeping to peace building. As it is witnessed that UN very recently is wading in the arena of stabilization agenda, so it is considered as newcomer for this, still it has 180,000 blue helmets and civilian personnel for peace keeping and peacemaking. It has adopted the strategy of disarmament, demobilization, and reintegration (DDR). Stabilization programmes are not necessarily taken in full scale scenario rather, they can be taken in a ‘no war no peace’ scenario. They are not meant to build a positive peace during peace building, nor are they aimed at social transformation, and reconstruction in case of development. They are carried out to create calm and conducive environment for a state to resume its functions. The aim is to reduce violence and increase trust on local security and justice. The important aspect which is necessary to mention here is that these programmes are undertaken with the

¹⁶¹ Claes Nilsson and Kristine Zetterlund. Ready or Not? Revamping the UN peacekeeping in 21st Century. February 2014. Accessed from <https://drive.google.com/a/ndu.edu.pk/file/d/0B4clmkQION-keXk5dkEweUpCYVE/view>

consent of host government/state. UN operations are guided by a doctrine which also actuates on the above mentioned description.¹⁶²

In this regard, year 2015 witnessed some important moves from Afghan Government and Taliban. Both the parties gathered in Pakistan and talks were held in Murree on 7th July 2015, in the presence of representatives of China and US. That was the time when Taliban agreed for an agreement within the constitution of Afghanistan. The golden opportunity for peace process faded away with the break of news related to death of Mulla Omer, and the announcement for continuity of Jihad against Afghan Government and its allies by his successor Mullah Akhtar Mansoor.¹⁶³

5.6 PEACE PROCESS IN AFGHANISTAN: EFFORTS THROUGH QUADRILATERAL COORDINATION GROUP (QCG)

Peace negotiation in Afghanistan is a complex process and there are several actors and stakeholders involved in it or influencing it. Considering that Taliban poses a formidable challenge to the security of Afghanistan and acknowledging that peace can only be brought through negotiations and dialogue, the Government of Afghanistan initiated a peace process in 2015. However, the peace process failed in July 2015 due to the revelation of Mullah Omar's death and subsequently calling off of the talks by Taliban. In December 2015, four member QCG¹⁶⁴ was formed during 'Heart of Asia' meeting to revive and facilitate the peace talks. In 2016, Afghanistan initiated a peace talk, amid growing Taliban attacks, with

¹⁶² Robert Muggah, Reflecting on United nations-led Stabalization: Late Peace Keeping, Early Peace Building or Something else? Page 56-70. In a book Edited by Robert Muggah, StabalizationsOperations, Security and Development States of Fragility. Routeldge, 2014.

¹⁶³ MateenHaider, *Afghan peace process best course of action in Pakistan's view: Aziz*. DAWN. 13 November, 2015. Accessed from <http://www.dawn.com/news/1219466>.

¹⁶⁴ Quadrilateral Coordination Group (QCG) was formed in December 2015 on the sidelines of 'Heart of Asia' meeting in Islamabad to strive to steer out Afghanistan from decades of violence and establish peace through peaceful means. Its members are: Afghanistan, Pakistan, China and the United States

the help of QCG, and urged the insurgent group to join the negotiating table. With the completion of QCG's four 'preparatory meetings' on January 11, 18 and February 06 and 23, the Group had been able to chalk out a roadmap, stipulating the stages and steps of the peace process for direct peace talks between the representatives of the Government of Afghanistan and Taliban groups. Also the Afghan High Peace Council (HPC) was revamped so that it could support the envisaged process more effectively.

The Joint Press Release following the fourth QCG meeting states "The QCG member states invite all Taliban and other groups to participate through their authorized representatives in the first round of direct peace talks with the Afghan government expected to take place by the first week of March 2016. Pakistan has graciously offered to host this round of talks in Islamabad."¹⁶⁵

However, in his remarks at fourth QCG meeting, the minister of Foreign Affairs, Salahuddin Rabbani maintained that though his government would welcome any group joining the peace process, but "those elements of the armed groups who continue to refuse to join the peace talks, and continue the path of violence must realize that our message to them is clear: our brave security forces will not hesitate in their resolve to fight them resolutely, wherever they are, to stop them from committing terror, violence and bloodshed."¹⁶⁶

5.6.1 Taliban's Response

¹⁶⁵ Joint Press Release: The Fourth Meeting of the Quadrilateral Coordination Group (QCG) of Afghanistan, Pakistan, the United States and China, 23 February 2017. URL: <http://mfa.gov.af/en/news/joint-press-release-the-fourth-meeting-of-the-quadrilateral-coordination-group-qcg-of-afghanistan-pakistan-the-united-states-and-china>

¹⁶⁶ Remarks by the Minister of Foreign Affairs of the Islamic Republic of Afghanistan H.E. Salahuddin Rabbani at the 4th Meeting of the Quadrilateral Coordination Group (QCG). 23 February 2017. URL: <http://mfa.gov.af/en/news/remarks-by-the-minister-of-foreign-affairs-of-the-islamic-republic-of-afghanistan-he-salahuddin-rabbani-at-the-4th-meeting-of-the-quadrilateral-coordi> Accessed on 24 February 2017.

The Taleban, in their first response to the QCG statement issued by the spokesman of their political office in Qatar said they were “unaware of plans for talks.”¹⁶⁷ The Taleban spokesman, Muhammad Naim Wardak, added that they had not changed their position regarding the conditions under which they would be ready to join a peace process, as announced at the second Pugwash meeting in Doha on 23 January 2016.¹⁶⁸ Taliban has some pre-conditions ¹⁶⁹before they go to the negotiating Table, which include: excluding names of Taliban leaders from the UN blacklist; taking down awards set for arrest or killing of militants; releasing Taliban prisoners; establishment of official venue for the Islamic Emirate in Doha as the only authorised entity; withdrawal of foreign troops; implementation of Shariah law; and formation of interim government. Qutbuddin Hilal, adviser to President Ashraf Ghani on Peace Affairs, told that government of Afghanistan is willing to consider their demands except one i.e. installation of an interim government in Kabul.¹⁷⁰

Following the fourth QCG meeting and assertion by four countries’ representatives that Taliban would soon participate in the peace process, the Taliban has denied that it would be participating in any upcoming talks. “We reject any such rumours and unequivocally state that the leader of Islamic Emirate has not authorised anyone to participate in the meeting,” Taliban said in its official statement.¹⁷¹ Instead, Taliban leader Mullah Akhtar Mansour has recently asked Taliban fighters to prepare for a “decisive battle” in this summer offensive to

¹⁶⁷ Thomas Rutting, “In Search of a Peace Process: A ‘new’ HPC and Ultimatum for Taliban”, *Afghanistan Analysis Network*, 26 February 2017. URL: <https://www.afghanistan-analysts.org/in-search-of-a-peace-process-a-new-hpc-and-an-ultimatum-for-the-taleban/> Accessed on 28 February 2017

¹⁶⁸ Ibid

¹⁶⁹ “Four Countries Talks Resume to Revive Afghan Peace Plan”, *Al Jazeera*, War & Conflict, 06 February 2017. URL: <http://www.aljazeera.com/news/2016/02/country-talks-resume-revive-afghan-peace-plan-160206101157692.html> Accessed on 07 February 2017.

¹⁷⁰ Tahir Khan, “Afghanistan Taliban Government Talks: Kabul Amenable to all but one Taliban Demand”, *Express Tribune*, 02 March 2017

¹⁷¹ The official statement of Taliban has been published in “Taliban Rejects Talks. Again”, *Afghan Hindsight*, 07 March 2016. URL: <https://afghanhindsight.wordpress.com/2016/03/07/taliban-reject-talks-again/> Accessed on 12 March 2017.

take advantage of battlefield victories of last year.¹⁷² The refusal by Taliban to participate in the peace process is not surprising as the initiative by QCG has been unilateral. The framing of the agenda and setting up of the timelines was done unilaterally by QCG group and Taliban was not involved in the initial preparation. Further, Taliban has also accused the U.S. and Government of Afghanistan of hypocrisy, as on one hand, they are initiating peace process and asking Taliban to denounce terrorism, on the other hand, they are continuing with their drone attacks and counter insurgency programme.¹⁷³ Mullah Muhammad Rassul's dissident Taliban faction has also rejected the peace talk's offer and maintained that it would be ready to engage in peace talks only after the departure of all foreign troops.¹⁷⁴

The Taliban seems divided on whether they should openly engage in talks with Kabul government or wait for the time when the Afghan government collapse in the face of resistance. However, by rejecting the peace process, the Taliban is buying time for another violent offensive season, so that it can have an upper hand on the negotiating table. Since, a large number of NATO forces have withdrawn. Taliban would try to have its chance to establish Islamic Emirate. However, if Taliban agrees for the peace talks, in future, it will keep delaying the talks as it serves its interests both in peace politics and on the battle ground. However, all depends on the internal strength and coherence of Taliban to continue the insurgency.

5.6.2 Afghanistan-Pakistan Differences

¹⁷² Ayaz Gul, "Afghan Spy Chief Blames Pakistan for Taliban Resurgence", Afghan Open Press News, 28 March 2016. URL: <http://www.aopnews.com/taliban/afghan-spy-chief-blames-pakistan-for-taliban-resurgence/> Accessed on 29 March 2017

¹⁷³ "Taliban not Ready for Talks", *Outlook Afghanistan*, 06 March 2016. URL: http://www.outlookafghanistan.net/editorialdetail.php?post_id=14649 Accessed on 07 March 2017.

Though Pakistan has seemingly shown its commitment regarding cooperation in peace talks several times, Afghanistan has not been very confident about the role of Pakistan. The relations between the two countries reached their lowest point when the news of Mullah Omar's death was revealed after the Murree talks. Experts and officials of many countries debate whether Pakistan is committed to Afghan stability or to exerting control over Afghanistan through ties with the insurgent groups. DOD reports on Afghanistan's stability have repeatedly identified Afghan militants' safe haven in Pakistan as a threat to Afghan stability, and some recent DOD reports have stated that Pakistan uses proxy forces in Afghanistan to counter Indian influence there.¹⁷⁵

After years of denying that it harbours insurgents, Pakistan admitted to maintaining contacts with the Afghan Taliban and Haqqani network, and offered to act as a conduit between the Taliban and the United States and Afghanistan.¹⁷⁶ However, since the Heart of Asia Conference, reportedly Washington and Beijing have been pushing Islamabad to cooperate with Afghanistan for brokering groundbreaking peace talks between the Afghan government and the Taliban.

Though the four 'preparatory meetings' of the QCG were an attempt to mitigate the mistrust between Afghanistan and Pakistan, however, little progress seems to have been made on this front. The Afghanistan government believes that the onus lies with Pakistan for a successful peace negotiation with Taliban; however, Pakistan has maintained that it can only facilitate the peace talks. Further disagreement is that Afghanistan perceives Pakistan as having full

¹⁷⁵ Kenneth Katzman, "Afghanistan: Post Taliban Governance, Security, and U. S. Policy", Congressional Research Service, 17 February 2016. URL: <https://www.fas.org/sgp/crs/row/RL30588.pdf> Accessed on 16 March 2016

¹⁷⁶ Zalmay Khalilzad and James Dobbins, "Pakistan Holds the Key to Peace in Afghanistan", RAND Cooperation, 11 January 2016. URL: <http://www.rand.org/blog/2016/01/pakistan-holds-the-key-to-peace-in-afghanistan.html#> Accessed on 23 February 2016.

control on Taliban and it can play a major role in the peace process, however, Pakistan says that it has only limited influence on Taliban.¹⁷⁷ This is going to be a test of genuineness for Pakistan as it is believed that Pakistan has managed both – participating in a ‘war on terror’ and at the same time facilitating Taliban to grow on its soil. Until now, Taliban has been seen as its strongest card in the regional power play, so what would motivate Pakistan, now, to act against Taliban?

However, Afghanistan's anger is unlikely to change Pakistan's Afghan policies since the country's military and civil establishments still consider the Taliban as an important strategic asset and Pakistan security apparatus still believes that the Taliban could be used as a strategic tool to counter Indian presence in Afghanistan. Meanwhile, in an interview to Fars News Agency of Iran, former president Hamid Karzai has suggested that Russia, Iran and India should also be included in the ongoing international push to revive the stalled Afghan peace process.¹⁷⁸

5.6.3 Challenges

There have been several gaps and challenges in the current peace initiative by QCG, which should be dealt carefully. The challenges are as follows:

Since Taliban is not a monolithic group, it has to be carefully charted out as to which group(s) the Afghan government is targeting to engage. The government should plan in advance what it would do if Taliban refuses to participate.

¹⁷⁷ Abdul Basit, “Afghanistan’s Last Chance for Peace”, *International The News*, 19 January 2016. URL: <http://www.thenews.com.pk/print/92121-Afghanistans-last-chance-for-peace> Accessed on 28 January 2016.

¹⁷⁸ Javed Hamim Kakar, “Karzai Wants Russia, Iran, India Included in Peace Push”, *Pajhwok Afghan News*, 06 February 2016. URL: <http://www.pajhwok.com/en/2016/02/06/karzai-wants-russia-iran-india-included-peace-push> Accessed on 12 February 2016.

In case the Taliban agrees to participate, what would be the agenda of talks? To what extent can the government develop a consensus with Taliban?

Another important challenge for Afghanistan would be to convince Taliban to accept Afghan constitution, which seems a bit difficult as Taliban has always strived for Shariah based law in the country.

To what extent the Government of Afghanistan can trust Pakistan and its role in the peace process? What role would China play to secure its national interests? Would it convince Pakistan to bring Taliban to the negotiating table or would it rely on Pakistan's strategy?

5.7 KEY DEVELOPMENTS IN 2016 TOWARDS THE IMPLEMENTATION OF INCLUSIVE NATIONAL AND REGIONAL PROCESSES TO ENHANCE PEACE, REINTEGRATION AND RECONCILIATION. ¹⁷⁹

➤ On 11 January 2016, the Quadrilateral Coordination Group (QCG) consisting of Afghanistan, China, Pakistan and the United States met for the first time to discuss the Afghan peace and reconciliation process in Islamabad. Parties confirmed mutual efforts to facilitate an Afghan-led and Afghan-owned peace and reconciliation process to achieve lasting peace and stability in Afghanistan and the region. Three further QCG meetings were held.

➤ On 21 September 2016 in New York, on the margins of the 71st UN General Assembly, India, Afghanistan and the United States held a round of trilateral consultations at which they reaffirmed shared interests in advancing peace and security in the region, as well as countering terrorism.

¹⁷⁹ The situation in Afghanistan and its implication for peace and security, Report of Secretary General – 3rd march 2017

- On 22 September 2016, a peace agreement was signed between the Afghan Government and Hizb-e Islami Gulbuddin (HIG). On 6 November 2016, the Afghan government and the HIG Joint Executive Commission for the implementation of the peace agreement officially started its work.
- On 20 November 2016, a HIG delegation met with President Ghani to discuss the release of HIG prisoners, refugee repatriation and land distribution. Two days later, a HIG delegation visited Pul-e-Charkhi prison in Kabul and met HIG prisoners. All issues regarding the implementation of the peace agreement continue to be addressed by the Joint Executive Commission.
- There were four meetings convened by Pugwash in 2016 related to peace and security in Afghanistan; 23-24 January 2016 in Doha, Qatar on “Peace and Security in Afghanistan”; 5 September 2016 in Kabul, Afghanistan on “moving towards peace in Afghanistan”; 22 November 2016 in Islamabad, Pakistan on “Pakistan-Afghan relations” and; 13 December 2016 in Kabul, Afghanistan on “peace in Afghanistan”.

5.8 PEACE TALKS SPONSORED BY RUSSIA

On April 14th 2017, Moscow invited 12 states to take part in consultations devoted to the national reconciliation process in Afghanistan and the start of direct talks between the country’s government and the Taliban.¹⁸⁰

In December, Moscow hosted consultations between diplomats from Russia, Pakistan, and China to discuss the start of a national reconciliation process in Afghanistan. The format was expanded in mid-February to involve Afghanistan, Iran, and India.

¹⁸⁰ The US should have attended the latest peace talks, Available at <https://www.dawn.com/news/1327276>

However, it is important to note here that, U.S. administration refused to take part in the conference, questioning Russian intentions and motives. With support from the US and other NATO members, the conference in Moscow could have been a major stride towards resolving the Afghan crisis. Despite having conflicting views and interests, regional actors seemed to be inching toward a single approach to stability in the war-torn country.

But the Trump team, in spite of America's dismal failure to enforce a semblance of security in a country dubbed as the graveyard of empires, remains cynical of regional peace bids. The US, which is yet to unveil its game plan, chose to play the spoiler by boycotting the negotiations.

5.9 INCREASE IN DEATH TOLL

For Afghanistan, 2016 was another year coupled with both ups and downs that tested the government, people, and the international community's resolve to assist the country. Failures of the National Unity Government of Afghanistan (NUG) included the Taliban's temporary re-capture of the strategic provincial capital of Kunduz for a second time, the re emergence of the Islamic State in eastern Afghanistan, and the government's inability to create employment opportunities to stop the exodus of Afghans into Europe. Meanwhile on the upside for the NUG, 2016 has seen the peace deal with Hezb-i-Islami Gulbuddin, increased connectivity with China, the opening of the first rail connection between Afghanistan and Turkmenistan, and successful efforts to isolate Pakistan at the regional and international level¹⁸¹.

¹⁸¹ Available at <http://thediplomat.com/2016/12/challenges-and-opportunities-for-afghanistan-in-2017/>

As per the report on 27 April 2017¹⁸² United Nations mission in Afghanistan urged all parties to the conflict to take immediate and concrete measures to better protect civilians from harm, as the latest data for 2017 shows continued high numbers of civilian casualties.

“It is civilians, with increasing numbers of women and children, who far too often bear the brunt of the conflict,” said Tadamichi Yamamoto, the Secretary-General's Special Representative and the head of the UN Assistance Mission in Afghanistan (UNAMA) in a press release. “With the so-called fighting season imminent, I appeal to all parties to take every measure possible to prevent unnecessary and unacceptable harm to Afghan civilians.”

In the first quarter of 2017, UNAMA documented 2,181 civilian casualties – 715 dead and 1,466 injured, a four per cent decrease compared to the same period in 2016. Civilian deaths decreased by two per cent while civilian injuries decreased by five per cent.

Ground fighting remained the leading cause of civilian casualties, accounting for 35 per cent of all civilian casualties.

Anti-Government elements caused 62 per cent of civilian casualties, 447 dead and 906 injured for a combined 1,353, reflecting a five per cent increase compared to the same period in 2016.

UNAMA attributed 451, or 21 per cent of, civilian casualties – 165 dead and 286 injured – to pro-Government forces, a decrease of two per cent compared to the same period in 2016.

¹⁸² UNAMA Causality report available at <https://unama.unmissions.org/unama-first-quarter-2017-civilian-casualty-data>

The mission documented 148 civilian casualties – 72 dead and 76 injured – from aerial operations, a disturbing increase compared to 29 civilian casualties – eight dead and 21 injured – in the first quarter of 2016.

Improvised explosive devices (all non-suicide switch types) remained the second leading cause of civilian casualties, responsible for 409 civilian casualties – 126 dead and 283 injured, a decrease of one per cent compared to the same period in 2016 and comprising 19 per cent of all civilian casualties.

Suicide and complex attacks continued to cause record levels of civilian harm. The Mission recorded a five percent increase in civilian casualties from these tactics – 374 civilian casualties, 108 dead and 266 injured, accounting for 17 per cent of all civilian casualties.

Pressure-plate improvised explosive devices caused 218 civilian casualties, 86 dead and 132 injured, a 12 per cent increase.

Civilian casualties from unexploded ordnance increased by one per cent to 203, 50 dead and 153 injured, of which children comprised 81 per cent.

UNAMA is extremely concerned by increases in both child and women civilian casualties, particularly deaths. The Mission recorded a 24 per cent increase to 273 women civilian casualties, 88 dead and 185 injured.

Also in the first quarter, the mission recorded 735 child casualties, 210 dead and 525 injured, a three per cent increase compared to the same period in 2016.

5.10 CONCLUSION

The role of UN in Afghanistan is very important, as after signing of BSA and withdrawal of NATO forces, there is again resurgence of direct violence in Afghanistan as it was witnessed when Taliban took over Kunduz last year.

The peace talks are a contentious issue, however, not least within Afghanistan itself. Western engagement, meanwhile, remains characterized by a lack of knowledge about the nature of the Taliban and what it stands for.

It is widely agreed that there is no military solution to the Afghan conflict. The US has long sought quick fixes such as more troops or exerting more diplomatic pressure on Pakistan to manage the problem. These measures may weaken the Taliban in the short term, but they won't lead to long-term peace. Increasing pressure on Islamabad, for example, may simply see it seek allies elsewhere in the region—Pakistan is already one of the closest partners of China. Given this, the most likely scenario for the year ahead is that of a continued stalemate, with neither the government nor the Taliban strong enough to tip the power balance completely in its favour.

Although one can be critical of the UN role, it is important to note that without the political will of the international community, its impact was always going to be limited. As the UN Secretary General commented in 1997: "It could be argued that...the role of the United Nations in Afghanistan is little more than that of an alibi to provide cover for the inaction – or worse – of the international community at large".

CHAPTER- VI

RESPONSIBILITY TO PROTECT AND ITS IMPLEMENTATION –

CASE STUDIES

6.1 BACKGROUND

The Responsibility to Protect norm is a norm that was propounded based on established principles of international law. The several horrible violent conflicts at the end of the twentieth century, which led to unspeakable human rights atrocities and innocent civilians being killed, made clear that the international community should act.

This paper adheres to the definition of R2P as proposed by the UN Secretary-General, who – drawing from the wordings of the 2005 World Summit Outcome Document, identified R2P as a concept consisting of three pillars:

(1) The primary responsibility of states to protect their own populations from the four crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as from their incitement.

(2) The international community's responsibility to assist a state to fulfill its R2P.

(3) The international community's responsibility to take timely and decisive action, in accordance with the UN Charter, in cases where the state has manifestly failed to protect its population from one or more of the four crimes.¹⁸³

It is undeniable that every conflict is different and in every case other interests are at stake. This the reason I have chosen four case studies to be compared. The case studies I have considered here are Kosovo, Chechnya, Libya and Syria. Kosovo and Chechnya present two case studies prior to the establishment of the norm in which intervention happened in Kosovo and not in Chechnya. Both cases have in common that they are both in Eastern Europe, in both cases they fight for independence and both cases dealt with a humanitarian crisis. But, after looking closer into the two cases there are also a lot of difference between the two cases. The background of the two cases is different looking at the demographics,

183 UN Secretary-General, Implementing the Responsibility to Protect, 2009, A/63/677. 8 Stahn, Responsibility to Protect, at pg 110.

history and political situation. The international community involvement differs from each other and the interests at stake differ.¹⁸⁴

The Responsibility to Protect is a political and legal norm and not one or the other. It depends on the conflict and the parties involved which side of the norm gets precedence over the other. To test the discrepancy between the norm on paper and the impact in practice I have chosen two case studies: Libya and Syria. Although, both cases are of very recent nature, they both contribute a lot to my hypothesis. Libya case shows a textbook example of implementing the written Responsibility to Protect norm in practice. There is no discrepancy between purpose and impact. And that the Syria case shows a textbook example of discrepancy between a written norm and application of the norm in practice. There is a discrepancy between purpose and impact. The two cases both have the same background of establishment of the conflict. Both states were influenced by the Arabic revolts against the current regimes and their leaders. In both states the opposition wanted democracy and protested in the streets. In both cases the demonstrations were put down violently which ended in a violent conflict between government troops and opposition troops. So why did the international community apply the Responsibility to Protect norm in Libya and not in Syria?

¹⁸⁴ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

6.2 KOSOVO CONFLICT- A HUMANITARIAN INTERVENTION

One of the most interesting cases for the establishment of the Responsibility to Protect norm is the humanitarian intervention in Kosovo. The Kosovo conflict is about the will of the Kosovo Albanians to establish an independent state free from the Federate Republic of Yugoslavia (FRY). Serbia, however, was not willing to let Kosovo separate from the Federate Republic of Yugoslavia. The situation became very violent at the end of the 1990s after which NATO could not ignore the situation and had to intervene to prevent a humanitarian crisis¹⁸⁵. This summarizes the Kosovo case in just a couple of sentences, but the true reasoning behind the conflict is much more complicated of course as was the situation around the intervention by the international community. Vital aspects to be analysed in this case is which factors lead up to the Kosovo conflict in which the international community felt it had a responsibility to protect the civilians targeted? Why is the Kosovo conflict of importance for the establishment of the Responsibility to Protect norm?

6.2.1 Background to the Kosovo conflict

Both Serbs and Albanians claim to have a historical right to the territory. The earliest known inhabitants of Kosovo were the Illyrians which are the ancestors of the Albanians (Malcolm, 1998: 340). However, the Serbians claim that they lived first in the territory of Kosovo dating back to the sixth century. The Albanians appeared in the area by the early Middle Ages as nomadic shepherds. By the 12th century almost all Kosovo region was in Serbian

185- Welsh, J.M. (2004), 'Humanitarian Intervention and International Relations', Oxford: University Press. 110 111

hands and Kosovo was their administrative and cultural centre.¹⁸⁶ However in 1389, in the Battle of Kosovo Polje, the Serbs were defeated by the Ottoman Turks. Kosovo became part of the Ottoman Empire. Afterwards Serbs left Kosovo in large numbers. As a result, Kosovo was resettled by Albanians. The Serbs took over Kosovo control again by 1912¹⁸⁷. At the Conference of Ambassadors in London in 1912 Serbia was given sovereignty over Kosovo which remained until the end of the Kosovo crisis. Within Kosovo there was much anti-Serbian sentiment since the population was still mostly Albanian. By 1912 around 64 percent of the population of Kosovo was Albanian¹⁸⁸. During the Second World War nearly 100.000 Albanians moved into Kosovo territory. In 1940 the Communist Party of Yugoslavia had accepted in writing an autonomous "Peasant Republic of Kosovo", but the promise was not kept. After the war, thousands of Serbs were prohibited from returning to Kosovo, and thousands of Albanians immigrated into Kosovo.

In 1967 Tito changed his policy in favour of Kosovo. Tito gave more concessions to the Albanian population related to Albanian nationalism, languages, and education and other cultural issues. Because of immigration of Albanians, emigration of Serbs and a very high Albanian birth rate between 1961-1971 Albanian population increased from 67 percent to 77 percent of the Kosovo population.¹⁸⁹ These developments continued and intensified. The 1974 constitution made Kosovo an Autonomous province within the Federation and gave it an equal status as the other territories within the Federation of Yugoslavia. Tito died on May 4, 1980 after which tension led up again.

186- Vickers, M. (1998), 'Between Serb and Albanian: A history of Kosovo'. New York: Columbia University Press. Stephen Walt (2009), 'Alliances in a UniPolar World', 18-21

187- Malcolm, N. (1998), 'Kosovo A Short History'. London, Basingstoke and Oxford: Pan Macmillan. 332

188- Supra note 2 pp 32-33

189- Supra note 3 pp 34

The extremist part of the Kosovo Albanians desired an ethnically clean Kosovo and intimidated the Kosovo Serbs. Kosovo Serbs protested by the Serbian government about their status in Kosovo. By 1987 the Serbian government proposed to end Kosovo's autonomy.

Officially Serbia could not achieve this because Kosovo was under Federal rule and not Serbian. By the beginning of the 1990s Kosovo Albanians made up ninety percent of the Kosovo population. Slobodan Milosevic came to power as president of Serbia in late 1987. The process to abolish Kosovo autonomy began in March 1989 when Serbia gained direct control over Kosovo. Serbia wanted peaceful co-existence in Kosovo and adopted the "Program for Achieving Peace, Freedom and Equality in Kosovo (1990)"¹⁹⁰. Kosovo Albanians, however, did not accept Serbia authority. In 1990, Kosovo Albanians proclaimed the Sovereign Republic of Kosovo. Serbia then officially dissolved Kosovo's government, took executive control and dissolved Kosovo autonomy. The emergency measures imposed by Serbia resulted in a de Albanianization of cultural and educational institutions in Kosovo with a consequent re-Serbianization occurring¹⁹¹. In response Albanian Kosovars adopted a constitution for their Republic of Kosovo.

The League for a Democratic Kosovo (LDK) developed quickly into 700.000 members. In September of 1991 the un-recognized Republic of Kosovo approved a resolution proclaiming the independence and sovereignty of Kosovo. In the summer of 1992 Albanians and Serbs in Kosovo lived almost in complete isolation of each other.

190- See Jansen, G.R (1999), 'Albanians and Serbs in Kosovo: An Abbreviated History- An Opening for the The Islamic Jihad in Europe', Colorado: State University Fort Collins.

191 - ibid

After the Dayton Accord it became mainly violent. The National Movement for the Liberation of Kosovo and the Kosovo Liberation Army (KLA) entered into a violent campaign to radicalize the situation. Serbia acted brutally to stop the insurgence by the KLA. This made the Kosovo Albanians supports the KLA even more. Both sides committed horrible human rights violations, only the crimes committed by Serbia were by government groups and the Kosovo Albanians by a small rebel underground group.

6.2.2 Involvement of international community

To stop the tensions between Serbs and Albanians Martti Ahtisaari, chairman at the peace conference in Rambouillet, France (January 1999) warned that NATO was ready to use military force to enforce a peace settlement. Present were the Western allies, Yugoslavia and representatives of the major Albanian Kosovar groups demanding for independence. At the conference, a two-week deadline was issued to accept the peace proposal. Consequence would be, by not complying before the deadline passed, that airstrikes would be carried out by NATO. The settlement of the peace proposal consisted of the demand on Yugoslavia to withdraw its forces from Kosovo, the KLA to lay down their arms and that NATO peace-keeping troops were allowed on the ground to enforce the agreement¹⁹². A three year waiting period was instigated to settle the political future of Kosovo. The Kosovo Albanians signed the agreement, but the Serbs were not willing to accept Kosovo independence. Serbia also was not willing to give up many aspects of its national sovereignty. By February 1999 tension kept rising and a war between the Kosovo Albanians and Serbia seemed to be unavoidable. Both sides committed horrible crimes and fought the war making a lot of

192- International Crisis Group, Kosovo and Serbia after the ICJ Opinion (Pristina/Belgrade/Brussels, 2010, Europe Report No. 206).

innocent casualties. I think it is remarkable that the international community put the blame for the violence in Kosovo on Milosevic. The international community imposed several demands on Serbia which it did not comply with.

However it was the KLA, who sensed that NATO was on its side and intensified its military efforts. This led the Serbs to intensify their military campaign. The UN Security Council only responded to the escalation of the violence in 1999 by imposing a weapons embargo and economic and diplomatic sanctions on the Federal Republic of Yugoslavia. NATO, on the contrary, judged UN actions not adequate enough and threatened Belgrade with air strikes. NATO interpreted UN Security Council Resolution 1199 of 23 September 1998 as a legitimization for the use of force against the Federal Republic of Yugoslavia because the UN called for a complete access for humanitarian organizations¹⁹³. After an ultimatum issued by NATO, Yugoslav President Slobodan Milosevic and US special envoy Richard Holbrooke agreed in October 1998 on a partial withdrawal of the Serbian military forces, but the stop of violence was only for short time and in March 1999 NATO started an air campaign against the Federal Republic of Yugoslavia.

6.2.3 A Responsibility to end Humanitarian crisis

The NATO bombing campaign was aimed to force the Serbian side to accept the Rambouillet agreement and prevent a humanitarian crisis. NATO expected that it would take only a few days to bring the Belgrade government to surrender, but instead the military operation took eleven weeks before the war ended¹⁹⁴. The intervention took so much time

193: Resolution 1244 of 10 June 1999 and the report of the Secretary General of 12 June (S/1999/672)
S/RES/1199 of 23 September 1998 S/RES/1203 of 24 October 1998

194: Charney, J. I (1999), 'Anticipatory Humanitarian Intervention in Kosovo', 93 (4), pp. 836-839.

and effort, because Serbian military reacted with extreme violence against the Albanian civilian population. In June 1999, representatives of the Yugoslav military and NATO came up with a military-technical agreement on the withdrawal of Yugoslav troops from Kosovo, which ended the war. On the basis of Resolution 1244 of 10 June 1999 and the report of the Secretary General of 12 June, the NATO-led Kosovo Force (KFOR) established its presence in Kosovo.¹⁹⁵

NATO conducted military intervention in Kosovo without approval of the UN Security Council. The Kosovo case raised a difficult situation for the international community. The international community had to choose between human rights protection and respecting sovereignty rights. It became clear that economic sanctions and diplomatic pressure was not enough in the case of Kosovo. In certain cases military intervention is necessary to prevent (more) atrocities to take place. However, the UN could not give its consent to military intervention in Kosovo because of the veto rights of China and Russia. The UN did not have a back-up plan when the Rambouillet talks would fail¹⁹⁶.

The NATO Treaty acknowledges that the "Military intervention is the primary responsibility of the Security Council for the maintenance of international peace and security"¹⁹⁷. But, NATO felt the moral need to stop a humanitarian catastrophe in Kosovo and support international efforts to secure a peaceful settlement. The UN Security Council could not forcefully take action, because of the objections by Russia and China to humanitarian intervention in Kosovo. NATO unilaterally decided to intervene, "The choice of NATO to

195- Resolution 1244 of 10 June 1999 and the report of the Secretary General of 12 June (S/1999/672)

196- Thakur, R. (1999), 'The UN and Kosovo's Challenge of Humanitarian Intervention', United Nations University. Link: <http://isanet.ccit.arizona.edu/archive/kosovoandun.html>.

197- Malmvig, H (2006), 'State Sovereignty and Intervention. A Discourse Analysis of Interventionary and Non-interventionary practices in Kosovo and Algeria', London: Routledge.

intervene was clearly a European response to a European problem and according to NATO it was not precedent for action outside Europe”¹⁹⁸.

NATO was convinced that the human rights situation and the threat for Europe by spreading violence and refugee spoil-over would legitimize their decision to intervene. Gray¹⁹⁹ formulated it as “these tensions could lead to crises inimical to European stability and even to armed conflicts which could involve outside powers or spill over into NATO countries, having a direct effect on the security of the Alliance”. NATO did not want to set a precedent or make military intervention a regular form of action, but felt the moral need to intervene in the Kosovo case. NATO states could point to numerous arguments to support their view of the legitimacy of the humanitarian intervention in Kosovo. The Federal Republic of Yugoslavia (FRY) refused to comply with the Security Council resolution 1199 based on Chapter VII of the UN Charter which intended the Federal Republic of Yugoslavia to halt hostilities, and take immediate steps to prevent a humanitarian catastrophe.

NATO bombing was intended to positively improve the situation in Kosovo for the civilians. Consequences of the air strikes by NATO were not all positive. Instead of backing down the Serbs stepped up their war effort with the KLA and close to a million Albanian Kosovars were driven out of Kosovo. Also, the air strikes did cause innocent civilians to be killed. Both sides were deadlocked in their fighting. Both sides had to compromise and they did in order to stop the fighting. As of June 5, 1999 Serbia and NATO signed a peace agreement. NATO achieved that “Serbia agreed to "substantial" autonomy for Kosovo, withdrawal of all Serb military, police and paramilitary forces, a return of all the refugees,

198- Charney, J. I (1999), ‘Anticipatory Humanitarian Intervention in Kosovo’, 93 (4), pp. 834-841.

199- Gray, C. (2008), ‘International law and the use of force’, Oxford: University Press.

and an international armed security presence in Kosovo”. Serbia achieved that its territorial integrity would be respected and that Kosovo remains within the sovereignty rights of Yugoslavia²⁰⁰.

Now, what is the extended value of a responsibility to protect for the international community in cases like those of Kosovo? Those in favor of the intervention have argued that the intervention brought the ethnic cleansing of Kosovo's Albanians to an end. The bombing campaign speeded up the downfall of Slobodan Milošević's government²⁰¹. Those in favor of the military intervention see Milošević as responsible for the gross human rights violations and many more war crimes committed. Those opposed to the intervention saw the intervention as being controversial. For instance, Noam Chomsky “condemned NATO's military campaign in Yugoslavia, particularly its aerial bombing which included the bombing of civilian populated territory and resources. The bombing did not create durable solutions with regard to a full respect of the rights of the people living in the territory”.

Those in favor of the intervention accepted that “Sometimes principle of territorial integrity has to yield in order to defend a set of values enshrined in human rights law”. The Independent International Commission on Kosovo concluded in its report that “the NATO intervention in Kosovo was not legal but legitimate. It was illegal because it did not meet with procedural rules provided by the UN Charter and that the intervention was legitimate because prior to its occurrence all necessary diplomatic means were utilized”²⁰². Critics, however, state: “The NATO cure greatly worsened the Milosevic disease”. By the end of

200- Akin, B.M. (2010), ‘The Kosovo Crisis and the UN March’. Link: <http://www.eurasiacritic.com/articles/kosovo-crisis-and-un>.

201- ibid

202- Thakur, R. (1999), ‘The UN and Kosovo’s Challenge of Humanitarian Intervention’, United Nations University. Link: <http://isanet.ccit.arizona.edu/archive/kosovoandun.html>

1999, a quarter of a million refugees from Kosovo were accounted for. The people in favor of the intervention by NATO on the basis of a moral need of a responsibility to protect base their belief on intervention on cardinal lesson of Srebrenica, during the Bosnia crisis.

In general NATO's actions in Kosovo were internationally accepted. Former UN Secretary-General Kofi Annan was critical on the intervention, and on the indecision by the United Nations to not-intervene. A Resolution proposed by Russia condemning the bombing was defeated in the Security Council 12-3, with only Russia, China, and Namibia voting in favour. The majority of the international community was convinced that NATO was right to intervene and that the international community has got a responsibility to protect its world citizens.

6.3 THE CHECHNYA CASE - A MISSING RESPONSIBILITY TO PROTECT

The Chechnya Republic or better known as just Chechnya is an autonomous republic of the Russian Federation. The opposition in Chechnya fights for complete independence from the Russian Federation and calls its state Itsjkerie.²⁰³ In nineties of the twentieth century out of Chechnya consisted 93,5 percent Chechen population and 3,7 percent Russians²⁰⁴. The rest were small ethnic minorities. Remarkable is that throughout history except right before the outbreak of the second Chechnya War on August 26, 1999 all religious backgrounds lived peacefully coincided. The fall of communism and the Soviet Republic lead to the search of a common collective identity which decreased the tolerability towards other religious groups.

203 Hughes, J. (2007), 'From nationalism to jihad', Philadelphia: University of Pennsylvania Press.

204 Tiskov, V.A. (2004), 'Life in a war-torn society', Berkeley: University of California Press.

It is remarkable in the case of Chechnya that while gross human rights violations were made by both Russia and the Chechen rebels, the international community did nothing to stop atrocities.

6.3.1 Background of Chechnya conflict

One of the most important events in history for Chechnya was the arrival of the Russians in the 16th century. The relationship and conflicts between Russian leaders and the Chechen is of great importance to understand the struggles in the twentieth century. The history between Chechnya and Russia started with the realm of the Russian Tsar Ivan the horrible (1556) in which, first tempt to conquer the Caucasus was undertaken. But, it was only until Peter the Great in the beginning of the 18th century that the Russian empire and Chechnya became opposite sides in a struggle for the territory.²⁰⁵

In twentieth century, again there was a rebellion in Northern Caucasus against Russian ruling. During the Russian Civil War, Chechen supported the Bolsheviks in their strife with the hope that this would lead to Chechen independence. But result was that, they got autonomy on paper, but in reality it was nothing more than just a formality. The Second World War gave hope for the Chechen, because the Germans promised them a form of autonomy and respect of Chechen religion, language and culture when they defeated Russia. When Soviet troops started to win from the Germans, Stalin ordered revenge on the Chechen for helping the enemy. The Chechen were deported to Central-Asia in February

²⁰⁵ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

1944. Chechnya was wiped of the map and completely integrated as being Russian²⁰⁶. When Stalin died in 1953 his successors did not grant independence or rights to the Chechen. Stalin's successors, however, did allow Chechen to return to what previous was Chechen territory. By 1957 more than 200.000 Chechnya people arrived in former Chechen territory which was occupied by Russian immigrants. The Chechen were seen as secondary citizens and were often discriminated on. The Chechen people did not accept their situation and undertook violent actions against the immigrants who took over their land.²⁰⁷

A second reason for the Chechen opposition to live up again is the power struggle in the Kremlin after the breakup of the Former Soviet Union in 1991 which left a power vacuum. Former Chechen General Doedajev saw his chance fit to call out 'The independent state of Chechnya' under leadership of the Chechen National Congress (CNC) in 1991²⁰⁸. The Kremlin tried to get Doedajev out of power by naming a pro-Russian government for Chechnya under supervision of Avtoerchanov which failed. Yeltsin, the new Russian leader felt he had no other chance than intervening Chechen territory and bomb Grozny on December 11, 1994. In the first six months it looked like Russia was on the winning hand, but in reality Russian army was not ready for such a large scale operation and decided to negotiate with the Chechen rebels. Doedajev was murdered and Yeltsin negotiated with his successor Jandarbiev after the loss of Grozny by Russia which led to the Khasavyurt- peace agreements in April 1996. This officially ended the first Chechen War.

206- Supra note 20

207- Supra note 19

208- Tiskov, V.A. (2004), 'Life in a war-torn society', Berkeley: University of California Press.

In January 1997 Chechnya held its first free elections as an independent state. Maschadov got the majority of the votes. Maschadov was a man with a moderate political view who wanted to keep the dialogue with the Kremlin open. War must be avoided, because the people want peace. Downside of the election of Maschadov was that he was not Islamic and a major part of the Chechen politicians wanted to create a Islamic state. Vice-president Basajev laid down his function and joined the Radicals as opposition against Maschadov's government from the Islamic corner. Rebels in favor of a Islamic state attacked neighbor state Dagestan in August 1999 in order to put pressure on the Chechen government and spite Russian reaction²⁰⁹. Consequence of this event was that Russian troops for the second time invaded Chechnya on October 1, 1999 and the second Chechnya War was a fact. Russians suspected Chechen government to be behind the attacks on Dagestan and within a short time frame the Russians owned 80 percent of Chechen territory under prime-minister Vladimir Putin.

Putin got elected as new president of the Russian Federation in 2000 and named Achmat Kadyrov as new leader of the semi-republic of Russia. Kadyrov was not really pro-Russian, but was seen by the Chechen people as collaborator with the Kremlin. Russia tried to stabilize Chechnya by investing money in the semi-republic to develop it. This effort did not succeed because of corruption. Chechen economy deteriorated further. In May 2004 the rebels succeeded in murdering Chechen president Kadyrov through a bomb attack during a parade in Grozny. Russia named the pro-Russian Aloe Alchanov as his successor at the next elections. The Chechen people claim there was election fraud committed and opposed the election of Alchanov. The tensions between Russia and Chechen rebels rose up again.

209- Shah, A. (2004), 'Crisis in Chechnya', Published: September 04, 2004. Link: <http://www.globalissues.org/article/100/crisis-in-chechnya>

Both Chechen Wars are known for their violent background. Number of human rights violations was reported during both wars. During the first war the rebels and the Russian troops fought in civilian occupied territory in which a lot of innocent civilians lost their lives. The second Chechen War was even more brutal because of the bomb attacks and the specific targeting of civilian casualties. The Russian army used excessive amount of violence. More than 100.000 Chechen people fled Chechnya. An estimate is that in both wars 100.000 civilians, military and rebellions were killed²¹⁰.

From the first Chechen War onward different human rights organizations have warned the international community about the ongoing atrocities committed in Chechnya by both the rebellions and the Russian army. Further, human rights activists and journalist tried to gather prove for the atrocities, but it was very dangerous and hard for them to collect evidence. Several human rights activists and journalists have been murdered because of their investigation or where just collateral damage.

6.3.2 International community as mere spectators

The international community did not receive much information about the Russia- Chechen conflict, because of the rigid control on media coverage and prohibition of human rights observers in the area. The reasons why International community did not react to situation in Chechnya were due to self-interested motivations. First, the economic benefits were very important for the decision not to intervene. Chechnya is very important to Russia for its

²¹⁰· ibid

natural resources. The oil- and gas winning is an important revenue for Russia and a lot of states are dependent on Russia for their oil and gas produces²¹¹.

The international community was afraid that by criticizing or even intervening in Chechnya would amount to Russia stopping the sale of oil and gas. On the other hand, western states were to benefit from Chechen independence. An independent Chechnya would put Russia out of the oil and gas control in the territory which would establish cheaper oil and gas winning by the western states. A second reason for the international community not to intervene in the crisis was Russia's claim of fighting a war against terrorism. Especially the US saw an important alliance with Russia in the fight against terrorism. Third, as Hilsum²¹² summarizes it perfectly: "The international community has instead chosen the path of self-deception, choosing to believe Russia's claims that the situation in Chechnya is stabilizing, and so be spared of making tough decisions about what actions are necessary to stop flagrant abuses and secure the well-being of the people of the region. All the international community could muster were well-intended statements of concern that were never reinforced with political, diplomatic, financial or other consequences. Chechnya was placed on the agenda of the U.N. Commission on Human Rights, the highest human rights body within the U.N. system, but even there a resolution on Chechnya failed to pass".

Other states did not dare to intervene because of Russia being a powerful nation. The U.S. and European governments have broad political and economic agendas with Russia and were hesitant to risk a good relationship. Fourth reason is that Russia is a permanent member of the United Nations Security Council, Russia was able to shield Chechnya from

211- Hilsum, L.(2004), ' The conflict the west always ignores', New Statesman. Published January 26, 2004.

Link: <http://www.globalissues.org/>

212- ibid

serious U.N. actions. Russia would have vetoed all Security Council Resolutions anyway. This leaves the question open why did states not take actions on bilateral or regional level? In my opinion this had to do with Russia being a powerful state.

Consequence of not being held responsible for the gross human rights violations is that Russia learned an important lesson about the limits of the international community's political will in pursuing human rights when a powerful state is involved. In dealing with Chechnya today, governments and multilateral institutions stress the need for a political solution to end the conflict, rather than pressing for an immediate end to human rights abuses, let alone holding Russia account for them²¹³.

The only form of criticism that Russia got was from the Organization for Security and Co-operation in Europe (OSCE), the UN Human rights Commission and later on the EU. The OSCE tried to put an end to the conflict, but Russia revoked their right mandate to work in Chechnya. So, the OSCE could not do much than suspending Russia's voting rights and keep dialogue open. In late 1999, the EU took the measure to freeze certain technical assistance programs with Russia, but never thought about intervening. In 2000 and 2001 the U.N. Human Rights Commission adopted resolutions condemning human rights abuses in Chechnya, but did not follow up on them.

NATO and UN member states could have effectively put an end to conflict in Chechnya as was in Bosnia and Kosovo. The Bosnia intervention ended with the Dayton agreement and

213 Shah, A. (2004), 'Crisis in Chechnya', Published: September 04, 2004. Link: <http://www.globalissues.org/article/100/crisis-in-chechnya>

in Kosovo a re-establishment of autonomy and the ousting of President Milosevic which created more stability in the area.

Both interventions were without the approval of Russia. It is different in the case of Chechnya because Russia is involved, but that should be an ever bigger reason to intervene for NATO. Human rights abuse by a Security Council permanent member should especially not be tolerated by the international community. The scale of the humanitarian violations in Chechnya is too much to allow selfish motives to dissuade not to intervene. The international community failed in the case of Chechnya in my opinion. Intervening with heavy military power should not have to be an option, but creating safe havens is the least the international community could have done.

6.4 THE LIBYA CASE- APPLICATION OF R2P NORM

The Libyan civil war (Libyan revolution) was an armed conflict in the North African state of Libya, fought between forces loyal to Colonel Muammar Gadhafi and those trying to end his government. The protests against Gadhafi started on Tuesday, 15 February 2011, in Benghazi which led to clashes with security forces that fired on the crowd²¹⁴. The protests escalated into a rebellion that spread across the country. The opposition established an interim governing body, the National Transitional Council, which was recognized by the United Nations on 16 September 2011 and replaced the Gaddafi Government. Muammar Gadhafi remained at large until 20 October 2011, when he was captured and killed

214' Claes, J. (2011), 'Libya and the Responsibility to Protect', Published: Center for Conflict Analysis and Prevention, on March 1, 2011. Link: <http://www.usip.org/publications/libya-and-the-responsibility-to-protect>

attempting to escape from Site²¹⁵. The National Transitional Council "declared the liberation of Libya" and the official end of the war on 23 October 2011.²¹⁶

The Libyan civil war was part of a bigger wave of protests going around in the Middle East at that moment. The fighting took about half a year before it officially ended. In practice, however, the fighting is still occurring in Libya. The international community got involved during the civil war because it felt it had a responsibility to protect the Libyan citizens from being targeted and stop other gross human rights violations from taking place. It is interesting to see in the case of Libya that the international community did apply the Responsibility to Protect-norm.

6.4.1 Background to the Libyan Civil War

Muammar Gadhafi became the ruler of Libya in 1969. He abolished the Libyan Constitution of 1951, and adopted laws based on his own ideology The Green Book²¹⁷. He officially stepped down from power in 1977, but held the reins behind the scene until 2011. Under Gadhafi, Libya was theoretically a decentralized, direct democracy state run according to the philosophy of Gadhafi's The Green Book , but according to Freedom House, however,

215- International Coalition for the Responsibility to Protect, 2012. Link:

<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya>

²¹⁶ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at:

https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

²¹⁷ Hillstrom, D.(2011), 'The Libyan No Fly Zone: Responsibility to Protect and International Law', Published March 21, 2011. Link: <http://www.foreignpolicyjournal.com/2011/03/21/the-libyan-no-fly-zone-responsibility-to-protect-and-international-law>

“these structures were often manipulated to ensure the dominance of Gadhafi, who reportedly continued to dominate all aspects of government”²¹⁸.

Despite one of the highest unemployment rates in the region, Libya's Human Development Index in 2010 was the highest in Africa.²¹⁹ Positive for the civilians was that Libya had welfare systems allowing access to free education, free healthcare, and financial assistance for housing, access to fresh water across large parts of the country, but unfortunately was the government control over every aspect of the daily life of the people.²²⁰

The protests and confrontations began in on 15 February 2011. On the evening of 15 February, between 500 and 600 demonstrators protested in front of Benghazi's police headquarters after the arrest of human rights lawyer Fathi Terbil. Crowds were armed molotov cocktails and stones on which the Police responded with tear gas, water cannons, and rubber bullets. Libyan security forces fired live ammunition into the armed protests. The rebels are composed primarily of civilians, such as teachers, students, lawyers, and oil workers, and a contingent of professional soldiers that defected from the Libyan Army and joined the rebels. Gadhafi's administration had repeatedly asserted that the rebels included al-Qaeda fighters. NATO's Supreme Allied Commander James G. Stavridis stated that “intelligence reports suggested “flickers” of al-Qaeda activity were present among the rebels, but also added that there is not sufficient information to confirm there is any significant al-Qaeda or terrorist presence. Denials of al-Qaeda membership were issued by

²¹⁸ Supra note 29

²¹⁹ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

²²⁰ ibid

the rebels”²²¹. International Crisis Group believes this to have been a political manoeuvre to divert attention away from Gadhafi himself. The Libyan government was convinced that the armed rebellion was composed of mercenaries. But it was actually Gadhafi himself who used mercenaries. Gadhafi forces reportedly surrounded themselves with civilians to protect themselves and key military sites from air strikes. Amnesty International cited claims that Gadhafi had placed his tanks next to civilian facilities, using them as shields. According to Libyan state television, the rebels also used human shields in Misrata²²². Gadhafi was convinced that the revolt against his rule was the result of a colonialist plot by foreign states, particularly blaming France, the US and the UK, to control oil and enslave the Libyan people. ²²³Gaddafi blamed rebel groups of being traitors and engaging into war on terror against their own population. However, The Libyan government were reported to have employed snipers, artillery, helicopter gunships, warplanes, anti-aircraft weaponry, and warships against demonstrations and funeral processions. It was also reported that security forces and foreign mercenaries repeatedly used firearms, including assault rifles and machine guns, as well as knives against protesters. Rebel fighter in hospital in Tripoli Amnesty International also reported that security forces targeted paramedics helping injured protesters. Injured demonstrators were sometimes denied access to hospitals and ambulance transport.²²⁴

²²¹ Supra note 30

²²² Claes, J. (2011), ‘Libya and the Responsibility to Protect’, Published: Center for Conflict Analysis and Prevention, on March 1, 2011. Link: <http://www.usip.org/publications/libya-and-the-responsibility-to-protect>

²²³ Analysis of the United States LIABILITY for war crime in Afghanistan (no date). Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361631042_Analysis_of_the_United_States'_Liability_for_War_Crime_in_Afghanistan/links/62da421082bb472992967f8e/Analysis-of-the-United-States-Liability-for-War-Crime-in-Afghanistan.pdf (Accessed: June 1, 2022).

²²⁴ *ibid*

In June 2011, a more detailed investigation carried out by Amnesty International found that many of the allegations against Gadhafi and the Libyan state turned out to either be false or lack any credible evidence, noting that rebels at times appeared to have knowingly made false claims or manufactured evidence and the rebels committed crimes against humanity themselves²²⁵.

By the end of February, Gadhafi's government had lost control of a significant part of Libya. But in March, Gaddafi's forces pushed the rebels back and eventually reached Benghazi and Misrata to recover those cities. By 22 August, rebel fighters had gained entrance into Tripoli and occupied Green Square, which was renamed into Martyrs' Square in memory of those who had died²²⁶. The NTC captured him on 20 October 2011, and reported that Gaddafi had been killed in the city. The rebels called for a return to the 1952 constitution and a transition to multi-party democracy. The National Transitional Council tried to consolidate efforts for change in the rule of Libya. The main objectives of the group did not include forming an interim government, but instead to co-ordinate resistance efforts between the different towns held in rebel control, and to give a political "face" to the opposition to present to the world.

6.4.2 International community and the use of the Responsibility to Protect-norm

According to a report from the International Crisis Group, "much Western media coverage has from the outset presented a very one-sided view of the logic of events, portraying the protest movement as entirely peaceful and repeatedly suggesting that the government's

225- ICISS (2001) On the Responsibility to Protect, <http://www.iciss.ca/pdf/Commission-Report.pdf>

226- Hillstrom, D.(2011), 'The Libyan No Fly Zone: Responsibility to Protect and International Law', Published March 21, 2011. Link: <http://www.foreignpolicyjournal.com/2011/03/21/the-libyan-no-fly-zone-responsibility-to-protect-and-international-law>

security forces were unaccountably massacring unarmed demonstrators who presented no security challenge". This established danger of a one-sided view of the international community and put all the blame on the other side while reality was that both sides committed crimes.

On 21 February 2011 the Libyan opposition called on the UN to impose a no-fly zone on all Tripoli to cut off all supplies of arms and mercenaries to the regime. On 19 March 2011 the military intervention in Libya on the basis of United Nations Security Council Resolution 1973 began. That same day, military operations began, with US forces and one British submarine firing cruise missiles, the French Air Force, United States Air Force and British Royal Air Force undertaking ground actions across Libya and a naval blockade was established by the Royal Navy. The effort was initially largely led by the United States. NATO took control of the arms embargo on 23 March, named Operation Unified Protector. An attempt to unify the military command of the air campaign first failed over objections by the French, German, and Turkish governments. On 24 March, NATO agreed to take control of the no-fly zone, while command of targeting ground unit's remains with coalition forces. Fighting in Libya ended in late October following the death of Muammar Gaddafi, and NATO stated it would end operations over Libya on 31 October 2011. Libya's new government requested that its mission be extended to the end of the year, but on 27 October, the Security Council voted to end NATO's mandate for military action on 31 October.

International reactions to the 2011 military intervention in Libya were diverse. Opponents against the 2011 military intervention in Libya have made allegations of violating the limits imposed upon the intervention by UN Security Council Resolution 1973. At the end of May 2011, Western troops were captured on film in Libya, despite Resolution 1973 specifically

forbidding "a foreign occupation force of any form on any part of Libyan territory". In the article however, it reports that armed Westerners but not Western troops were on the ground. On August 11, after NATO airstrike on Majer that allegedly killed 85 civilians, UN Secretary-General Ban Ki-moon "called on all sides to do as much as possible to avoid killing innocent people". NATO has been accused of being responsible for the deaths of far more civilians than if it had not intervened according those opposed to the intervention.

In January 2012, independent human rights groups published a report describing these human rights violations and accusing NATO of war crimes. Some critics of Western intervention suggested that resources were the real reasons for the intervention and not democratic or humanitarian concerns. Gaddafi's Libya was known to possess vast resources, particularly in the form of oil reserves and financial capital. Gadhafi himself referred to the intervention as a "colonial crusade...capable of unleashing a full scale war," a sentiment that was echoed by Russian Prime Minister Vladimir Putin.

However, those in favor of the intervention saw the military intervention in Libya as an example of the Responsibility to Protect policy adopted by the UN at the 2005 World Summit. According to Gareth Evans²²⁷, "The international military intervention (SMH) in Libya is not about bombing for democracy or Muammar Gadhafi's head. Legally, morally, politically, and militarily it has only one justification: protecting the country's people".

6.4.3 The Responsibility to Protect in Libyan case as the first application of norm

²²⁷ See comments of Gareth Evans on International Coalition for the Responsibility to Protect, 2012. Link: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya>

A Just War is one which is waged with legitimate authority, with just cause and right intention. It must be likely to result in the restoration of law and order and the conditions for the fulfillment of human rights; it must be a last resort; and it must be fought proportionally. Finally, it must have a high probability of success: be winnable in the shortest possible time causing the minimum amount of harm. The difficulty in the case of the international engagement in Libya is obvious. Its legitimacy is in doubt, on the one hand, the UNSC has mandated operations to protect civilians; on the other, the governments with authority over NATO forces declared that their policy goal is Gadhafi relinquishing power. it's hard to separate the one goal from the other. Gadhafi has showed poor governance and abuse of rights and helping him from power is helping the Libyan people so it is a right intention.

Problematic in the case of Libya was also the demands of proportionality and making the distinction between military and civilians, and military necessity. Libya is perhaps the first time the Responsibility to Protect has been invoked so publicly, on such a scale, and used within the UN Security Council to justify a major military action. So the way it is framed and the way it plays out take on an importance even greater than the well-being of Libyans; affecting the well-being of future populations whose governments fail to live up to their responsibility. "Getting it wrong may mean years of delay in turning the Responsibility to Protect norm into a doctrine that's widely accepted and provides legitimacy to protect civilians anywhere and in the future".

6.5 SYRIAN CRISIS - DILEMMA OVER INTERVENTION UNDER R2P

At this moment the internationally community is involved in resolving the crisis in Syria. Gross human rights violations are taking place in different parts of the state. These human

rights violations are committed by the government, governmental supporters and by the opposition. Whole villages are said to be murdered by governmental mercenary troops.

Images about the atrocities can hardly reach the outside world, because of limitation on the media by the government. The international community is very concerned about the situation in Syria. This is why the UN sent a large amount of observers to monitor the situation. Also, former-UN Secretary General Kofi Anan is the leading diplomat who is negotiating a peace agreement between the government and the opposition. Until now, the international community mainly observed and recently different states opposed diplomatic and economic sanctions on Syria. But, diplomatic and economic sanctions have not done anything to resolve the violent situation in Syria. Until now, the international community is very reluctant to intervene by military means. The international community has mentioned the Responsibility to Protect-norm in different occasions during this conflict, but until now the norm has not done much to improve the situation in Syria. I am questioning whether or not the Responsibility to Protect-norm is very useful in practice, in a case like Syria. Why does the international community not intervene on the basis of the Responsibility to Protect-norm?

6.5.1 Background to the Syrian conflict

The Syrian uprising is part of the wider Arab revolts against governments and its leaders. It is a violent conflict that is still ongoing as we speak. The demonstrations across Syria started on January 26th, 2011 and developed into a nationwide uprising by an organized opposition. Protesters demanded the resignation of the Syrian Ba'ath government and more

specifically that of President Bashar al-Assad²²⁸. They protested on the streets for more democracy. The protest started peacefully, but soon the Syrian government had the Syrian Army to stop the uprising. The Syrian army used violent measure to disperse the protesters. The Syrian government denied using violent measures and stated that it is the fault of armed mercenary troops for causing trouble. At the end of 2011, the opposition began to unite itself and started to form fighting units in order to oppose the Syrian Army.

According to the United Nations up to approximately 14.000–19.000 people have been killed, of which about half were innocent civilians. The number of people injured or imprisoned is even much higher. The total official UN numbers of Syrian refugees reached around 180.000 people by June, 1 2012²²⁹. The claims have been contested by the Syrian government. Anti-government rebels have been accused of human rights abuses as well. For instance, kidnapping and executing loyal government citizens. The worst crimes until now have been committed by the Shabiha. The Shabiha are independent mercenaries loyal to the Assad family. They are suspected of killing whole families.

The uprising occurred in almost every city in Syria, except in the two largest cities of Syria: Damascus and Aleppo. These cities stayed loyal to the government. The opposition acknowledged that without mass participation in these two cities, the government will survive and avoid the same fate of Egypt and Tunisia. However, on 1 February 2012 the Free Syrian army claimed that “Fifty percent of Syrian territory is no longer under the control of

228- Buchanan, Alan (2003), ‘Reforming the International law of Humanitarian Intervention’, Cambridge: Cambridge University Press, pp. 130-174.

229- International Coalition for the Responsibility to Protect, 2012. Link:
<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria>

the regime and that half of the country was now effectively a no-go zone for the security forces”²³⁰.

Reasons behind the conflict are said to be the call for more democracy, more liberties and the establishment of a better economic situation. Until 2011 there was only one political party which was the Ba’ath party of Assad. No other parties were allowed. The media were watched under constant scrutiny and often oppressed by the government. Further, there was an enormous amount of unemployed young adults who were unsatisfied with their social position. Also, the living conditions were deteriorating quickly because the government did not invest in the standard of living of its people.

6.5.2 International involvement

Since 12 April 2012, both sides, the Syrian Government and the rebels of the FSA entered a UN mediated ceasefire period negotiated by Kofi Anan. Despite the initial plans to begin the ceasefire on 10 April 2012, both sides still engaged in attacks. On 21 April 2012, the United Nations Security Council adopted resolution 2043 as basis for the United Nations Supervision Mission in Syria (UNSMIS) for an initial 90-day period. Hervé Ladsous, the UN Under-Secretary-General for Peacekeeping Operations, said that “both sides had violated the ceasefire agreement of April 12 and so the agreement was void”²³¹. This statement was affirmed by the increased fighting in the second half of May and the Houla massacre. On 29 May 2012, Kofi Annan headed for Syria to start negotiations again. The Free Syrian Army (FSA) was willing to come to some sort of an agreement with Kofi Annan and announced on 30 May 2012 that they were giving President Assad a 48-hour

²³⁰ ibid

²³¹ Supra note 40

deadline to abide by an international peace plan to end violence. On 1 June 2012, Assad rejected such a peace plan and promised to crush any anti-regime uprising. The rebel group Free Syrian Army (FSA) announced that it was resuming the fight again.

The situation worsened on June 6, 2012 when 78 civilians were killed in the Al-Qubair massacre committed by pro-government militia, the Shabiha²³². The UN observers rushed to the village in order to investigate the alleged massacre but were prohibited by the government to go to the city and were forced to retreat.

Information from within Syria remained limited because journalists were not allowed to do their jobs. On 19 December 2011 the only foreign investigation which was allowed by Assad was the independent monitoring mission by the League of Arab States as part of a peace initiative. However, shortly after the mission began reports emerged stating that the Syrian government was obstructing.

The Arab League, the U.S and the EU states all have condemned the use of violence against the protesters committed by government troops and supporters. China and Russia have criticized the government, but advised against sanctions. China and Russia were afraid that sanctions would lead into foreign intervention. However, military intervention has been ruled out by most states. The Arab League suspended Syria's membership over the government's response to the crisis. The latest attempts to resolve the crisis has been made through the appointment of Kofi Annan, as a special peace negotiator to resolve the Syrian crisis. Before March 2012 Russia had shown constant and active support for the Assad government. Russia often vetoed a UN Security Council Resolution, in occurrence with

²³² Supra note 38

China. Russia has shipped arms during the uprising to Assad's government for use against the rebels. Russian Middle East analyst Alexander Shumlin wrote that "The fall of the Syrian regime will mean the disappearance of Russia's last partner in conducting Soviet-style policies in the Middle East whose essence in many ways boiled down to countering the United States"²³³. Russia has used its UN Security council position on several occasions to block resolutions that would harm the Syrian government, including the French and British attempt to condemn the use of force by the Syrian government. Russia and China most of all wanted to prohibit another Libyan intervention scenario. When asked if Russia was supporting the Assad government, the Russian answer was "we are not protecting any regime"²³⁴.

President Barack Obama's administration condemned the use of violence, stating: "The United States stands for a set of universal rights, including the freedom of expression and assembly, and believes that governments, including the Syrian government, must address the legitimate aspirations of their people". On February 24, 2012 after a veto by Russia and China of an Arab League-backed initiative, Clinton condemned Russia and China position by saying "It's quite distressing to see two permanent members of the Security Council using their veto while people are being murdered —women, children, brave young men... It is just despicable and I ask whose side are they on? They are clearly not on the side of the Syrian people"²³⁵

233-Hehir, A. (2012), 'Syria and the Responsibility to Protect: Rhetoric Meets Reality', Published: March 14, 2012, available at <http://www.e-ir.info/2012/03/14/syria-and-theresponsibility-to-protect-rhetoric-meets-reality/>

234- Kuwalil, D. (2012), 'Responsibility to Protect: Why Libya and not Syria?', Published: April 6, 2012. available at www.accord.org.za/.../brief/policy_practice16.pdf

235- See http://mideastafrica.foreignpolicy.com/posts/2012/03/16/syrias_crisis_and_the_future_of_r2p

An application of the Responsibility to Protect norm aspects UN Member States, regional organizations and governments to urgently work together towards making an end to the violent situation.

The Security Council in the case of Syria failed to act accordingly due to its consistent inability to form an international consensus around the crisis because of Russia and China. However, on 21 March 2012, the UN Security Council adopted a presidential statement expressing "its gravest concern" regarding the situation in Syria. The statement gave full support to the peace negotiations process lead by the United Nations-Arab League Joint Special Envoy Kofi Annan, and called on the Syrian government and opposition to work with the Envoy towards a peaceful settlement of the Syrian crisis and the implementation of his initial six-point proposal²³⁶.

Between October 2011 and July 2012 Russia and China vetoed three UNSC resolutions aimed at holding the Syrian government accountable for mass atrocity crimes. However, on 27 September 2013 the UNSC adopted Resolution 2118, enabling the expeditious destruction of Syria's chemical weapons stockpile.

On 22 February 2014 the UNSC adopted another unanimous resolution demanding that all parties, but especially the Syrian government, immediately allow unhindered humanitarian access, including across borders, to civilians in need. The resolution demanded a halt to violence, called upon all parties to protect civilians and noted the government's "primary responsibility to protect."²³⁷

236- See Joint Special Envoy Kofi Annan Six point peace plan to end Syria crisis
<http://www.aljazeera.com/news/middleeast/2012/03/2012327153111767387.html>

237- See <http://www.globalr2p.org/regions/syria>

The UN Human Rights Council has adopted twelve resolutions condemning atrocities in Syria. The most recent, passed on 21 March, extended the mandate of the CoI for one year, condemned continued violations of IHL and international human rights law that may amount to war crimes or crimes against humanity, and demanded that the government uphold its responsibility to protect.

An international humanitarian conference for Syria took place in Kuwait on 15 January, during which donors pledged over \$2.4 billion, less than half of the \$6.5 billion the UN considers necessary to address the "worst humanitarian crisis" in decades.

6.5.3 Syria crisis – A Mockery of R2P

Despite the ongoing civil war, the first round of the "Geneva II" peace conference, aimed at ending the violence and establishing a transitional governing body in Syria, took place from 22 to 31 January. Representatives from the Syrian government and opposition, as well as approximately 40 other countries and regional organizations, attended. At the conclusion of the talks, the UN-League of Arab States Joint Special Representative, Lakhdar Brahimi, reported no progress towards an agreement. The conference resumed during the week of 10 February. On 15 February Brahimi publicly apologized to the Syrian people for the lack of any substantive progress²³⁸.

On 25 March the League of Arab States began a two-day annual summit in Kuwait, where special envoy Brahimi, speaking on behalf of the UN Secretary-General, appealed for an

²³⁸ See timeline for international response in Syria, Global Responsibility to Protect, <http://www.globalr2p.org/publications/135>

end the flow of weapons to armed groups in Syria. Saudi Arabia called for the League of Arab States to grant Syria's suspended seat to the National Coalition.

Problem is that military intervention in Syria would be a misapplication of the Responsibility to Protect norm and would radically weaken the norm's role in building both a better Middle East. But, staying out of the conflict will also weaken the norm's credibility, because in a situation where gross human rights violations are taking place the international community does nothing to prevent another massacre from happening.

6.6 CONCLUSION

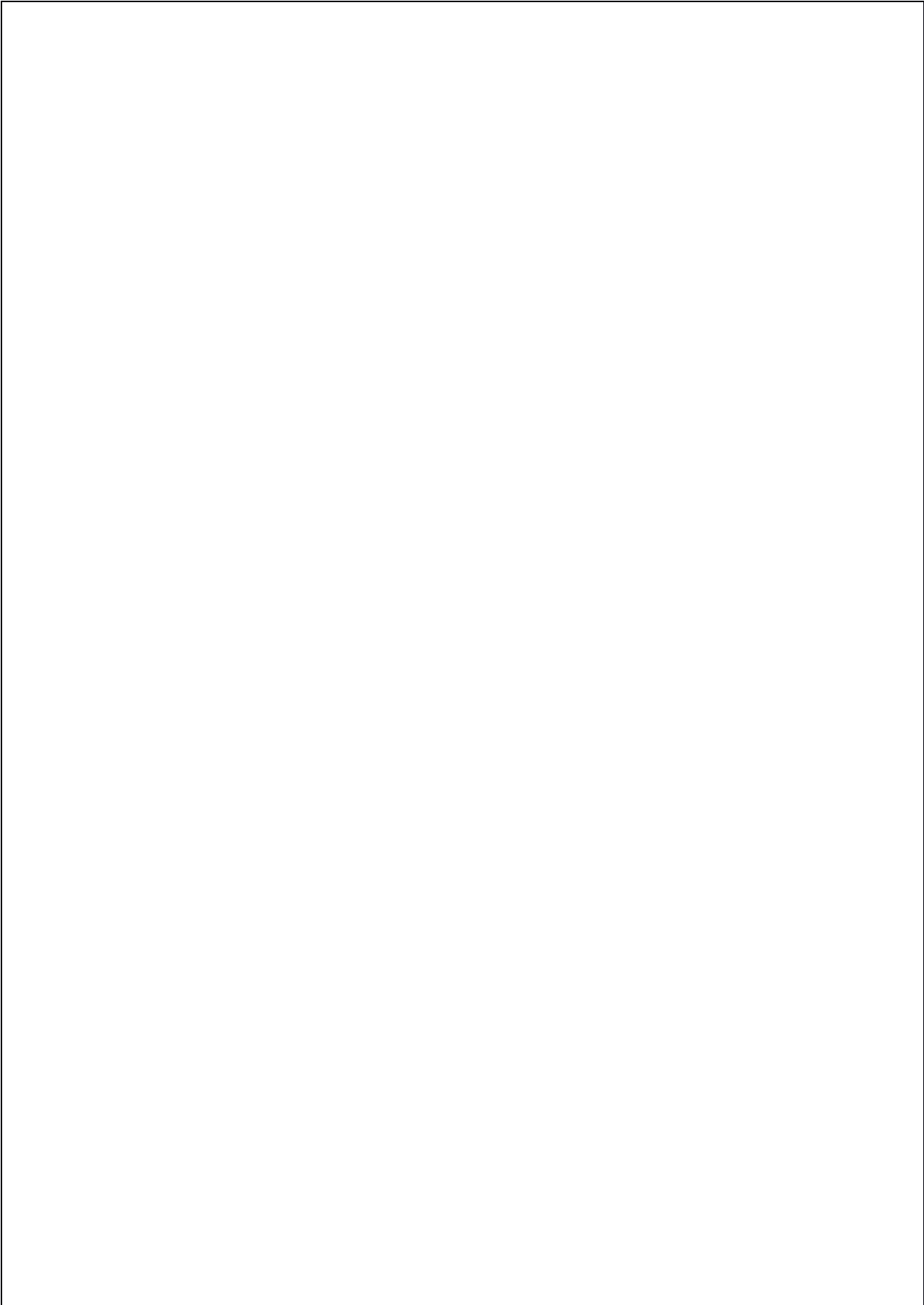
The basis of the Responsibility to Protect norm is still that state sovereignty entails that states are responsible for the lives and welfare of their citizens. But, Responsibility to Protect is more than only military intervention. In fact, the ICISS report states that intervention is only allowed in extreme cases and when certain criteria are met.

Those criteria mirror the moral tests from the just war theory, including the intervention must have a reasonable prospect for achieving success, which in light of the Responsibility to Protect norm entails better protection of civilian life than the status quo. That's the problem with intervention in Syria, namely that it probably leads to more innocent casualties. Airstrikes alone are not fit for Syria because much of the fighting takes place in cities and would cause significant civilian casualties. Also, Assad's forces are too strong and the opposition still too divided to be defeated.

This was different in Libya where the opposition was more united and Qaddafi forces not that well equipped and organized. But what about using international troops to create safe zones where the resistance could be armed & trained and wounded be taken care of? Kofi Anan has stated: “Understanding the limits of military force in the Syrian case is critical to the viability of the Responsibility to Protect norm as an international norm”. A failed intervention would only damage the credibility of the Responsibility to Protect norm for the future. States who are still worried about the use and application of the Responsibility to Protect norm will only doubt the legitimacy of the norm when the mission fails. Developing the norm into a legal doctrine would be impossible when its credibility is lost²³⁹.

On the other side, Syria interventionists do have a point when they say ignoring Syria could damage the doctrine's credibility. To my opinion diplomatic, legal and economic tactics have all been tried in the Syria case, but until now have failed. The Responsibility to Protect needs more international involvement. Even more important, according to me, is that the Syrian situation tests the international community's ability and willingness to apply the Responsibility to Protect norm consistently. Syria, just as Libya, is at a breaking point and action is pressing.

239-See Hehir, A. (2012), ‘Syria and the Responsibility to Protect: Rhetoric Meets Reality’, Published: March 14, 2012. Link: <http://www.e-ir.info/2012/03/14/syria-and-the-responsibility-to-protect-rhetoric-meets-reality/>



CHAPTER VII

FINDINGS, CONCLUSION AND RECOMMENDATIONS

In any ordered society, the task of keeping the peace is of primary importance. Only on the basis of peace and security can a legal order be developed. A study of the development of English law and political institutions reveals that the earliest concern of the Anglo-Saxon kings was to enforce "the King's peace." Not until reasonable certainty of peace was assured was there the opportunity to develop, institutions and procedures which would provide justice through law.

7.1 Responsibility

In the international community the maintenance of peace and security is also of first importance. So long as force can be used with impunity to achieve selfish ends, the strong will have little reason to use methods of cooperation- and accommodation to achieve common purposes, and the weak will find little protection in such procedures. Furthermore, the experience of two world wars has demonstrated not only that war is immensely destructive for all concerned but also that it solves few problems, creates many more than it solves, and generally leaves nations both great and small in a worse condition than it found them. It was, therefore, not surprising that those who wrote the Charter should have been convinced that the first job of the new organization, both in time and in importance, was to keep the peace. In line with this thought, the United States delegation to the San Francisco Conference reported to the President that "if any single provision of the Charter has more

substance than the others, it is surely the first sentence of Article 39, which places upon the Security Council the duty to determine the existence of 'any threat to the peace, breach of the peace or act of aggression' and to make recommendations or decide upon measures to be taken 'to maintain or restore international peace and security.

The Charter places upon the Security Council the primary responsibility for maintenance of international peace and security. This responsibility is made particularly clear with respect to measures to be taken in case of a threat to the peace, breach of the peace, or act of aggression." Under Articles 41 and 42 it may require Members to take such political, economic and military measures as may be necessary to restore international peace and security.

7.2 Testing of hypothesis

I began my research with the hypothesis that *“The UN Security Council has been successful in maintenance of peace and has been successful in this endeavor through implementing agencies. However, Action of UN Security Council towards maintenance of peace largely depends on the International relations of the permanent members”*

7.3 FINDINGS

In my analysis of powers, practice and effectiveness of UN Security Council was made, it is very evident that the full effectiveness of the Security Council as the primary instrument of peace enforcement was premised on two conditions, neither of which materialized: (i) the availability to the Security Council of military forces and facilities under the terms of agreements concluded between the Council and Members; and (ii) the effective cooperation of the permanent members of the Council in dealing with threats to the peace, breaches of

the peace, and acts of aggression. Various examples pointed towards the abuse of veto power by permanent five based on political reasonings rather than serving its true cause of protection of international peace and security.

While examining the various mechanisms adopted by UN Security Council for peacekeeping and dispute settlement it can be seen that, peaceful mechanisms such as deputation of observation mission or good offices mission have been effective in avoiding the possible threat to peace as well restoring peace amongst disputing states. Imposing financial sanctions has also been partially successful in ending conflict situation. However, when it comes to the forceful action, that is, military intervention or intervention on the basis of humanitarian grounds, it is difficult to come to a conclusion because of its varied application. The instances of Kosovo, Libya and recently Syria urges me to say that, Actions of UNSC to take actions on crimes against humanity has been biased to and majorly depends on the political stances and intra relation amongst P5.

Concerning the impact of the Responsibility to Protect norm in practice, it leaves open diplomatic, economic or military measures for the international community. The norm is still not applied in a consistent manner in practice and that is why there is still a discrepancy between the norm on paper and in practice. I feel that the Kosovo and Libya cases are exceptions where the norm was applied, but the overall practice concurs with the Chechenya and Syria case. In practice there are still too many downfalls to the working of the norm to be consistently applied. It is a work in progress, but until now it has failed in my opinion.

7.4 CONCLUSION

After the completion of analysis of all the data and comprehension of the findings, it is very much feasible to conclude that:

- The United Nations remains the indispensable organization that can bring the world around the table to formulate collective responses to shared challenges. Even as these challenges grow increasingly complex, Member States continue to turn to the UN as the universal forum to build consensus and unity in the face of daunting obstacles. But in order to deliver on its crucial responsibilities in a fast-moving world, the UN as an institution has to evolve.
- Many of the situations where UN has failed to take action against threat to peace or aggression is solely because of the dead lock situation created by the usage of veto by the P5. Because of veto many a times UNSC has failed to come to a conclusion and failed to even condemn states which are involved in such aggression.
- The Resolution of “Uniting for Peace” is a positive step towards ensuring the effectiveness of UN as it allows General Assembly to take action, if SC fails to come to a conclusion or take action. However, the scope of this power is limited and has to be enlarged, keeping in view of the ideologies with which UN was established.
- The doctrine of Responsibility to Protect though propounded with larger hope and expectations, has failed miserably in its implementation primarily due to the geo politics of the international community.

7.5 SUGGESTIONS

The future of the Security Council very largely depends upon the course of international relations and more particularly the attitudes of the major powers with respect to the role which the United Nations is to play.

Adopt Responsibility Not To Veto - This paper proposes that the permanent five members of the UN Security Council (P5) should agree not to use their veto power to block action in response to genocide and mass atrocities which would otherwise pass by a majority.

Sanctions should be designed with comparable deliberation and planning of military operations, with a clear understanding of purposes, objectives, consequences and impact assessments, evasion, contingency planning and exit strategies.

Security Council is oblige to follow the rules of general international law as well as the purposes and principles enclosed in the UN Charter

Responsibility of All, the decision making power vests not with the Security Council, but with every Member State. Whether a military intervention or any action to be taken against a state for its violation of international principles and crime against humanity, it shall be decided by general assembly rather than SC, because SC does not represent the interest of all.

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